

**ARKANSAS CODE
OF 1987
ANNOTATED**

OFFICIAL EDITION



VOLUME 17B • TITLE 17, CH. 29-79



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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 17B 2010 Replacement TITLE 17: PROFESSIONS, OCCUPATIONS AND BUSINESSES (CHAPTERS 29–79)

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
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4069113

ISBN 978-1-4224-6367-3



Matthew Bender & Company, Inc.

701 East Water Street, Charlottesville, VA 22902

www.lexisnexus.com

Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2010 Fiscal Session. Annotations are to the following sources:

Arkansas Advance Reports through 2010 Ark. LEXIS 133 (March 4, 2010) and 2010 Ark. App. LEXIS 441 (May 12, 2010).

Federal Supplement through March 5, 2010.

Federal Reporter 3d Series through April 5, 2010.

United States Supreme Court Reports through April 5, 2010.

Bankruptcy Reporter through April 12, 2010.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

A.L.R. 6th through Volume 17, p. 757.

ALR Fed. 2d through Volume 26, p. 381.

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| 4. Business and Commercial Law | 19. Public Finance |
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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

TITLE 17

PROFESSIONS, OCCUPATIONS, AND BUSINESSES

(CHAPTERS 1-28 IN VOLUME 17A; CHAPTERS 80-107 IN
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2. EMBALMERS AND FUNERAL DIRECTORS LAW — STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS.

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- 6. OUT-OF-STATE TUITION ASSISTANCE.
- 7. EYE ENUCLEATION.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-7 may not apply to § 17-29-313 which was enacted subsequently.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-26-101 et seq.

RESEARCH REFERENCES

ALR. Civil liability of undertaker in connection with transportation, burial, or safeguarding of body. 53 A.L.R.4th 360.
Liability for improper manner of reinterment of dead bodies. 53 A.L.R.4th 394.
Liability for injury or damages result-

ing from operation of vehicle in funeral procession or in procession which is claimed to have such legal status. 52 A.L.R.5th 155.
Am. Jur. 38 Am. Jur. 2d, Funeral D., § 3 et seq.

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SUBCHAPTER 2 — EMBALMERS AND FUNERAL DIRECTORS LAW — STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

- SECTION.
- 17-29-201. Creation — Members.
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Effective Dates. Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: “It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older

Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”
Acts 1983, No. 325, § 14: Mar. 3, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the practice of embalming and the directing of a funeral service are

distinct and different functions requiring licensure as separate entities, and that the continued issuance of a single license for these separate and distinct functions will cause harm to both licensees and the general public. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1995, No. 646, § 11: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 39, § 10: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two

(2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-29-201. Creation — Members.

(a) There is created the State Board of Embalmers and Funeral Directors.

(b)(1) The board shall consist of seven (7) members, appointed by the Governor with the advice and consent of the Senate for a term of three (3) years.

(2) Four (4) members, at least one (1) of whom shall be from each of the four (4) congressional districts, and one (1) at large representative shall be appointed as follows:

(A)(i) Five (5) members of the board shall be embalmers or funeral directors, or both, licensed under § 17-29-301 et seq. who shall have

had at least five (5) consecutive years of active experience as embalmers or funeral directors in Arkansas immediately preceding appointment.

(ii) The Governor shall appoint members to the board from three (3) nominees submitted by the licensed embalmers and funeral directors. In the event that no nominations are submitted to the Governor by July 1 of any year in which an appointment is to be made, the Governor may make the appointment provided that the appointee meets the other requirements for board membership; and

(B) One (1) member of the board shall be designated as a consumer representative. He or she shall be appointed from the state at large, subject to confirmation by the Senate, but he or she shall not be required to be appointed from a list submitted by the licensed embalmers and funeral directors. He or she shall be a full voting member.

(3)(A) One (1) member of the board shall not be actively engaged in or retired from the profession of embalming and funeral directing, shall be sixty (60) years of age or older, and shall represent the elderly. He or she shall be appointed from the state at large, subject to confirmation by the Senate, but he or she shall not be required to be appointed from a list submitted by the licensed embalmers and funeral directors. He or she shall be a full voting member.

(B) The position may not be held by the person holding the consumer representative position.

(c) No member shall serve more than three (3) consecutive three-year terms on the board.

(d)(1) The Governor may remove any member of the board for incompetence or improper conduct.

(2) Vacancies caused by death, resignation, or removal before the expiration of the term shall be filled by the Governor for the remainder of the term.

(e) The Governor shall furnish each member appointed to the board a certificate of appointment stating the date of the appointment and the date of the expiration of the appointment. Before entering upon his or her duties, each member appointed to the board shall qualify by taking the oath of office before an officer authorized by law to administer oaths in this state. This shall be noted on the certificate of appointment.

(f) Members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1983, No. 131, §§ 1-3, 5; 71-901, 71-903; Acts 1995, No. 646, § 3; 1983, No. 135, §§ 1-3, 5; 1983, No. 325, 1997, No. 250, § 136; 1997, No. 839, § 1. §§ 1, 3; A.S.A. 1947, §§ 6-623 — 6-626,

17-29-202. Meetings.

(a) The State Board of Embalmers and Funeral Directors shall hold not less than one (1) meeting annually for the purpose of selecting nominees for the appointment of one (1) to a term on the board. The

meeting shall be held at such time and place as the board may determine, after notice of the meeting has been given to the general public in a manner to be determined by the board, at least thirty (30) days prior to the meeting.

(b) The board shall hold at least two (2) examinations each year at convenient times and places.

(c) The board may hold such other meetings as it may deem necessary.

(d) Four (4) or more members shall comprise a quorum.

History. Acts 1983, No. 325, § 2; A.S.A. 1947, § 71-902; Acts 1999, No. 1138, § 1.

17-29-203. Selection of officers.

(a) The State Board of Embalmers and Funeral Directors appointed under the provisions of this chapter, and each successor thereto, is authorized to select from its own membership a president, vice president, and secretary-treasurer who shall serve for one-year terms or until their successors are elected and qualified.

(b) In the event no member of the board is able for any reason to serve as secretary-treasurer, then by a majority vote of the board, it may employ a person to serve as secretary-treasurer, and that person is not required to be a licensed embalmer or funeral director.

History. Acts 1983, No. 325, § 3; A.S.A. 1947, § 71-903; Acts 1989, No. 106, § 1.

17-29-204. Duties of secretary-treasurer.

The Secretary-treasurer of the State Board of Embalmers and Funeral Directors shall:

(1) Have general supervision and be held responsible for the direction of the office of the board;

(2) Have general supervision over field inspection and enforcement of the provisions of this subchapter and § 17-29-301 et seq.;

(3) Be responsible to the board. Such responsibility shall include timely dissemination of information;

(4) Be responsible for making public the procedures for making inquiries into the practice of funeral directors or embalmers and for making complaints concerning the practices;

(5) Keep a record in which shall be registered the name and business address of every person to whom licenses have been granted in accordance with § 17-29-301 et seq., the number and date of the license, and the date of renewal of the license;

(6) Supply on request to any person licensed as an embalmer or funeral director, to common carriers in this state, to hospitals licensed in this state, or to other persons reasonably entitled to a list of all persons and funeral establishments holding licenses under § 17-29-301 et seq. The publication giving the information shall include all laws,

rules, and regulations regarding the practice of embalming or funeral directing;

(7) Hold all moneys received by the board to pay the necessary and allowable expenses for the operation of the board in carrying out the provisions of this subchapter and § 17-29-301 et seq.

(8) Give bond to the State of Arkansas in such sum as the board may direct. Any premiums payable for the bond shall be paid from the funds of the board. The bond shall be deposited with the Auditor of State;

(9) Receive and be paid an annual salary not to exceed the amount authorized by law; and

(10) Be authorized to receive reimbursement for expenses incurred in performance of duties.

History. Acts 1983, No. 325, § 3; A.S.A. 1947, § 71-903; Acts 1997, No. 250, § 137.

A.C.R.C. Notes. The operation of subdivision (8) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursu-

ant to § 21-2-701 et seq. Subdivision (8) of this section may again become effective upon cessation of coverage under that program. See § 21-2-703.

This section should be read in conjunction with § 17-29-211.

17-29-205. Inspector.

(a) There may be appointed by the State Board of Embalmers and Funeral Directors an agent or agents whose title shall be Inspector of the Board of Embalmers and Funeral Directors of the State of Arkansas. No person shall be eligible for appointment to the office unless he or she has not fewer than five (5) consecutive years of active experience as an embalmer and funeral director licensed in this state. The board may appoint an investigator who need not be a licensed embalmer or funeral director.

(b) The inspector shall hold office at the pleasure of the board who shall determine his or her duties.

(c) The inspector, with proper identification, is authorized to enter the office, premises, establishment, or place of business of any business in this state where the practice of embalming or funeral directing is carried on, or where the practice is advertised as being carried on, for the purpose of inspecting the premises or establishment, inspecting the license and registration of any licensee, inspecting the manner and scope of training given to any apprentice therein, and to ensure compliance with all state laws, rules, and regulations pertaining to funeral service. Acceptance of a license under § 17-29-301 et seq. shall be the licensee's permission for the inspector to enter his or her business premises without legal process.

(d) The inspector is further authorized to serve and execute any process issued by any court under the provisions of this chapter, to serve and execute any papers or process issued by the board under the authority of this subchapter and § 17-29-301 et seq., and to perform such other duties as prescribed or ordered by the board.

(e) The inspector shall not accept any employment, salary, fees, or other remuneration from a funeral establishment or wholesale firm dealing in funeral supplies and equipment.

(f) The inspector shall receive such compensation as the board may determine within the maximum authorized by law.

History. Acts 1983, No. 325, § 3; A.S.A. 1947, § 71-903; Acts 1989, No. 106, § 2; 1997, No. 839, § 2.

17-29-206. Employees.

The State Board of Embalmers and Funeral Directors may employ clerical assistants or other employees as authorized by law and as necessary to carry out the provisions of this subchapter and § 17-29-301 et seq. The terms and conditions of the employment shall be determined by the board.

History. Acts 1983, No. 325, § 3; A.S.A. 1947, § 71-903.

17-29-207. Rules and regulations.

(a) The State Board of Embalmers and Funeral Directors is empowered to promulgate appropriate rules and regulations for the transaction of its business and for the betterment and promotion of the standards of service and practice to be followed in the practice of embalming and funeral directing in the State of Arkansas as it may deem expedient and consistent with the laws of this state and for the public good.

(b) The board is expressly authorized and empowered to promulgate rules and regulations reasonably necessary to reflect any changes in the law as adopted by the United States Congress or any appropriate agency of the United States Government as it affects funeral establishments, funeral directors, or embalmers and for the purpose of keeping this law consistent with, and compatible to, the laws of the United States.

(c) The board is authorized and empowered to determine the qualifications necessary to practice the science of embalming or the business of funeral directing, or both, and shall adopt bylaws, rules, and regulations in connection with the care and disposition of dead human bodies in this state. The board shall enforce compliance with the laws, rules, and regulations by those engaged in the science of embalming and business of funeral directing in this state and may transact any other business necessary for carrying out the provisions of this subchapter and § 17-29-301 et seq.

(d)(1) The board may promulgate reasonable regulations for the licensing of crematoriums.

(2)(A) Beginning January 1, 1990, no crematorium may be operated in this state unless licensed by the board, and no person shall be cremated in this state except at a licensed crematorium.

(B) Violations of this subsection are Class A misdemeanors.

(e)(1) In the interest of public health and to ensure the safe, secure, and timely transportation of dead human bodies in and through Arkansas, the board is authorized to license, inspect, and promulgate reasonable regulations for any person, partnership, corporation, association, society, or other legal entity engaged in the business of transporting dead human bodies over the public streets and highways of this state.

(2) Violations of regulations promulgated under this subsection are Class A misdemeanors.

History. Acts 1983, No. 325, §§ 4, 10; A.S.A. 1947, §§ 71-904, 71-910; Acts 1989, No. 106, § 6.

17-29-208. Fees.

The State Board of Embalmers and Funeral Directors shall establish and collect reasonable fees.

History. Acts 1983, No. 325, § 8; A.S.A. 1947, § 71-908; Acts 1989, No. 106, § 3.

17-29-209. Continuing education.

(a) The State Board of Embalmers and Funeral Directors may develop and establish by regulation a program for continuing education and its requirements for all funeral directors and embalmers licensed under § 17-29-301 et seq.

(b) The board shall have the authority to excuse licensees, as a group or as individuals, from a continuing education program, in the event any unusual circumstances, emergency, or hardship prevents participation in the program.

History. Acts 1983, No. 325, § 3; A.S.A. 1947, § 71-903.

17-29-210. Legal counsel.

(a) The State Board of Embalmers and Funeral Directors, when it shall deem necessary, shall be represented by the Attorney General.

(b) It may also employ special counsel when necessary, whose services shall be paid for from funds of the board. Special counsel shall be retained only with the prior approval of the Attorney General.

History. Acts 1983, No. 325, § 3; A.S.A. 1947, § 71-903.

A.C.R.C. Notes. Acts 1997, No. 39, § 4, provided: "None of the funds appropriated in this Act for Maintenance and General Operation shall be expended in payment for services of attorneys, unless the agency shall first make a request in writ-

ing to the Attorney General of the State of Arkansas to provide the required legal services. The Attorney General's Office shall provide the requested legal services, or, if the Attorney General's Office shall determine that sufficient personnel are not available to provide the requested legal services, the Attorney General shall

certify the same to the agency and may authorize the agency to employ legal counsel and to expend monies appropriated for Maintenance and General Operations therefor, if:

“(1) The Attorney General determines, and certifies in writing, that such agency needs the advice or assistance of legal counsel, and

“(2) The Attorney General consents in writing to the employment of the legal counsel to be retained by the agency.

“Such certification shall be required with respect to each instance of the employment of special legal counsel, or shall be required annually with respect to legal counsel employed on a retainer basis. A copy of such certification shall be entered in the official minutes of the agency, and shall be retained in the fiscal records of the agency for audit purposes.”

17-29-211. Administrative activities.

The Executive Secretary of the Burial Association Board shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors.

History. Acts 1997, No. 39, § 3.

A.C.R.C. Notes. This section should be read in conjunction with § 17-29-204.

Acts 1999, No. 166, § 3, provided: “PERSONAL SERVICES. The Executive Director of the Burial Board shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors. The State Board of Embalmers and Funeral Directors shall pay to the Burial Board an amount equal to one-half (½) of the salary of the Executive Secretary of the Burial Board, \$3,000 toward the salary of the Burial Board Secretary, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.”

Acts 2001, No. 20, § 3, provided: “PERSONAL SERVICES. The Executive Director of the Burial Board shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors. The State Board of Embalmers and Funeral Directors shall pay to the Burial Board an amount equal to one-half (½) of the salary of the Executive Secretary of the Burial Board, \$3,000 toward the salary of the Burial Board Secretary, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.”

Acts 2003, No. 31, § 3, provided: “PERSONAL SERVICES. The Executive Director of the Burial Board shall also be responsible for the administrative activities of the State Board of Embalmers and

Funeral Directors. The State Board of Embalmers and Funeral Directors shall pay to the Burial Board an amount equal to one-half (½) of the salary of the Executive Secretary of the Burial Board, \$3,000 toward the salary of the Burial Board Secretary, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.

“The provisions of this section shall be in effect only from July 1, 2003 through June 30, 2005.”

Acts 2005, No. 15, § 3, provided: “PERSONAL SERVICES. The Executive Director of the Burial Board shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors. The State Board of Embalmers and Funeral Directors shall pay to the Burial Board an amount equal to one-half (½) of the salary of the Executive Secretary of the Burial Board, \$3,000 toward the salary of the Burial Board Secretary, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.

“The provisions of this section shall be in effect only from July 1, 2005 through June 30, 2007.”

Acts 2007, No. 575, § 3, provided: “The Executive Director of the Burial Board shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral Directors. The State Board of Embalmers and Funeral Directors shall pay to the Burial Board an

amount equal to one-half (½) of the salary of the Executive Secretary of the Burial Board, \$3,000 toward the salary of the Burial Board Secretary, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.”

“The provisions of this section shall be in effect only from July 1, 2007 through June 30, 2009.”

Acts 2010, No. 156, § 3, provided: “PERSONAL SERVICES. The Burial Association Board Executive Secretary and the Burial Association Board Administrative Specialist III shall also be responsible for the administrative activities of the State Board of Embalmers and Funeral

Directors. The State Board of Embalmers and Funeral Directors shall pay to the Burial Association Board an amount equal to one-half (½) of the salary of the Burial Association Board Executive Secretary, up to one-half (½) of the salary of the Burial Association Board Administrative Specialist III, and the appropriate matching. This sum shall be paid during the first quarter of each fiscal year via fund transfer.

“The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2011.”

Cross References. As to the Burial Association Board office and employees, see § 23-78-107.

SUBCHAPTER 3 — EMBALMERS AND FUNERAL DIRECTORS LAW — LICENSING

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- 17-29-302. Funeral directors — Qualifications.
- 17-29-303. Embalmers, funeral directors — Examination — Certificates.
- 17-29-304. Funeral establishment — Requirements.
- 17-29-305. Funeral establishments — Examinations — Licenses.
- 17-29-306. Renewal.

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- 17-29-307. Revocation.
- 17-29-308. Grandfather clause.
- 17-29-309. Retired embalmers or funeral directors.
- 17-29-310. License requirements for out-of-state licenses.
- 17-29-311. Violations — Prohibitions.
- 17-29-312. Suspension or revocation — Procedure.
- 17-29-313. Permit required for crematorium construction.

A.C.R.C. Notes. References to “this subchapter” in §§ 17-29-301 — 17-29-312 may not apply to § 17-29-313 which was enacted subsequently.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1983, No. 325, § 14: Mar. 3, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the practice of embalming and the directing of a fu-

neral service are distinct and different functions requiring licensure as separate entities, and that the continued issuance of a single license for these separate and distinct functions will cause harm to both licensees and the general public. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval.”

17-29-301. Embalmers — Qualifications.

(a) Every person who desires to practice the science of embalming in this state shall:

- (1) Be at least eighteen (18) years of age;

(2) Be a graduate of an accredited high school or the equivalent thereof;

(3) Be a graduate of a school of embalming, which is accredited by the American Board of Funeral Service Education or accredited by the State Board of Embalmers and Funeral Directors;

(4) Make a written application to the State Board of Embalmers and Funeral Directors attaching the fee as prescribed in § 17-29-208;

(5) Have served as a registered apprentice embalmer for not less than twelve (12) months in the State of Arkansas under the direct personal supervision of an Arkansas-licensed embalmer and submit at least fifty (50) case reports to the State Board of Embalmers and Funeral Directors; and

(6) Take and pass both parts of the National Board Examination and both parts of the Arkansas laws, rules, and regulations exam and present himself or herself to the State Board of Embalmers and Funeral Directors for a licensing interview.

(b)(1) Any person desiring to engage in the science of embalming in this state, in addition to graduating from an approved college of mortuary science recognized by the State Board of Embalmers and Funeral Directors, shall serve an apprenticeship of one (1) year in the State of Arkansas under an embalmer licensed by the State Board of Embalmers and Funeral Directors and shall assist in the preparation of at least fifty (50) bodies.

(2)(A) This apprenticeship shall be registered with the State Board of Embalmers and Funeral Directors on applications provided by the State Board of Embalmers and Funeral Directors.

(B) Individual case reports shall be signed by both the apprentice and the licensed embalmer under whose supervision the work was done and filed with the State Board of Embalmers and Funeral Directors by the tenth day of the following month.

(3)(A) This apprenticeship may be served before, during, or after attending a college of mortuary science except when the applicant is receiving financial assistance from the state to attend mortuary school, in which instance the apprenticeship shall be served prior to attending mortuary school.

(B) This subdivision (b)(3) applies to persons who were enrolled in mortuary school on January 1, 2000, and those who enroll after that date.

History. Acts 1983, No. 325, §§ 4, 5; A.S.A. 1947, §§ 71-904, 71-905; Acts 1997, No. 839, § 3; 1999, No. 1138, § 2; 2001, No. 792, § 1; 2003, No. 367, § 1.

Publisher's Notes. Acts 1983, No. 325, § 5, provided, in part, that any person who, on March 3, 1983, was a duly regis-

tered apprentice in this state should immediately be granted a certificate of apprenticeship under this subchapter and should receive credit toward obtaining an embalmer's or funeral director's license for time spent by the apprentice prior to March 3, 1983.

17-29-302. Funeral directors — Qualifications.

(a) Every person who desires to engage in the business of funeral directing in this state shall:

(1) Be at least eighteen (18) years of age;

(2) Be a graduate of an accredited high school or the equivalent thereof;

(3)(A) Have served as an apprentice funeral director for not less than twenty-four (24) months in the State of Arkansas under the direct personal supervision of an Arkansas-licensed funeral director.

(B) Completion of the requirement to be a graduate of a school of embalmers as set forth in § 17-29-301(a)(3) may be substituted for twelve (12) of the twenty-four (24) months' apprenticeship established in this section;

(4) Make application to the State Board of Embalmers and Funeral Directors and attach the fee as prescribed in § 17-29-208; and

(5) Present himself or herself before the board at a time and place fixed by the board and make a passing grade on both the written and oral examinations.

(b)(1) Any person desiring to engage in the business of funeral directing in the State of Arkansas shall serve an apprenticeship of two (2) years in the State of Arkansas under a funeral director licensed by the board, and that person shall actively assist in conducting fifty (50) funerals. Notice of the apprenticeship shall be recorded with the Secretary-treasurer of the State Board of Embalmers and Funeral Directors and by the licensed funeral director supervising the apprenticeship not later than thirty (30) days after the commencement of the apprenticeship.

(2) If any person is a graduate of an accredited mortuary program and has passed the National Board Examination, that person shall be required to serve one (1) year as an apprentice funeral director.

(3) The board shall have the power to suspend or revoke a certificate of apprenticeship for violation of any provision of this subchapter or § 17-29-201 et seq.

(c) The board may require applicants for licensure as funeral directors to successfully complete up to twenty (20) hours of classroom instruction in funeral service practices and ethics, and laws, rules, and regulations affecting funeral service. Only courses of instruction approved by the board shall satisfy this requirement.

History. Acts 1983, No. 325, §§ 4, 5; A.S.A. 1947, §§ 71-904, 71-905; Acts 1989, No. 106, § 4; 1999, No. 1138, § 3; 2003, No. 367, § 2.

Publisher's Notes. Acts 1983, No. 325, § 5, provided, in part, that any person who, on March 3, 1983, was a duly regis-

tered apprentice in this state should immediately be granted a certificate of apprenticeship under this subchapter and should receive credit toward obtaining an embalmer's or funeral director's license for time spent by the apprentice prior to March 3, 1983.

17-29-303. Embalmers, funeral directors — Examination — Certificates.

(a) Within a reasonable time and in a place reasonably accessible to the applicant, after completion and filing of an application with the State Board of Embalmers and Funeral Directors, the board shall subject each applicant to a written and oral examination as to his or her competency to act as an embalmer or funeral director, or both.

(b) If on examination the board finds that the applicant possesses a knowledge of the science of embalming, sanitation, and disinfection, or funeral directing, or both, and meets the qualifications prescribed herein, the board shall issue the applicant a certificate authorizing him or her to practice the science of embalming or to engage in the business of funeral directing, or both. The board shall then register the applicant as a duly certified embalmer or funeral director, or both.

(c) The certificate shall be signed by the President and Secretary-treasurer of the State Board of Embalmers and Funeral Directors and shall have the official seal affixed.

(d) Every license holder shall maintain his or her license in a convenient place in his or her office or place of business.

History. Acts 1983, No. 325, § 4; A.S.A. 1947, § 71-904.

17-29-304. Funeral establishment — Requirements.

(a) No person shall conduct, maintain, manage, or operate a funeral establishment unless a license for each establishment has been issued by the State Board of Embalmers and Funeral Directors and is displayed in the funeral establishment.

(b)(1) No license shall be issued to operate a full-service funeral establishment by the board unless the establishment has employed a full-time person licensed as a funeral director.

(2) If the establishment is a part of a multiunit enterprise within this state, only one (1) establishment within the multiunit enterprise must have a full-time person licensed as funeral director, provided the full-time licensed person is reasonably accessible to the branch establishment.

(c) Application for the funeral establishment licenses shall be made on forms furnished by the board, on or before January 1 of each year, and accompanied by the specified fee.

(d) All embalming therein shall be performed by or under the direct supervision of an Arkansas-licensed embalmer.

(e) An establishment in which embalming is conducted shall have a preparation room with a sanitary floor, walls, and ceiling, adequate sanitary drainage and disposal facilities, including running water, and exhaust fans. Such an establishment shall comply with the regulations of the Department of Health for the prevention of the spread of contagious, infectious, or communicable diseases.

(f) Each funeral establishment using an available embalmer shall file with the board a notarized statement signed by the embalmer, stating that his or her services are available to the establishment at all times, and within a reasonable time after death occurs, not to exceed six (6) hours.

(g) A funeral establishment shall contain a casket selection room with a reasonable number of caskets therein. The reasonable number shall be determined by the board. However, if an establishment is a part of a multiunit enterprise, only one (1) establishment in the enterprise need have a selection room if it is within a reasonable distance of other establishments within the multiunit enterprise.

(h) Mobile homes or mobile units are prohibited for use as a funeral establishment or branch thereof. No mobile home or mobile units shall be used for the performance of any function or service of a funeral establishment except in case of emergency as prescribed by the board. Mobile homes, modular units, manufactured homes, and similar mobile units may be granted a replacement license on a case-by-case basis.

History. Acts 1983, No. 325, § 4; A.S.A. 1947, § 71-904; Acts 1999, No. 1138, § 4; 2003, No. 367, § 3.

17-29-305. Funeral establishments — Examinations — Licenses.

(a)(1) Funeral establishment licenses shall be issued, upon application to the State Board of Embalmers and Funeral Directors, only after examination of the establishment to be licensed reveals that the requirements of the board for an establishment license have been met. The fee shall accompany the application for a funeral establishment license.

(2) All funeral establishment licenses expire on December 31 of each year.

(3) The board shall grant or deny each application for a license under this section after it is filed.

(4) No person who has filed an application for a license shall be prosecuted for violation of this section unless it is shown that this application was duly denied by the board and that he or she was duly notified of the denial.

(b) When an establishment changes ownership, the board shall be notified in writing within thirty (30) days. At that time, a new license shall be issued in the name of the new establishment, provided that the requirements for licenses as established herein are met.

History. Acts 1983, No. 325, § 4; A.S.A. 1947, § 71-904; Acts 1997, No. 839, § 4; 1999, No. 1138, § 5.

17-29-306. Renewal.

(a) Every license holder under the provisions of this subchapter who wishes to continue the practice of the science of embalming or the business of funeral directing, or both, shall pay to the Secretary-treasurer of the State Board of Embalmers and Funeral Directors on or before January 31 of each year a renewal fee. Certificates not renewed by January 31 of any year shall be considered delinquent. Any person in arrears more than three (3) years shall make application to the board and appear before the board at a regular meeting to be eligible for renewal of license.

(b) Renewal of all funeral establishment licenses shall be made on or before January 31 of each year and shall be accompanied by the annual renewal fee prescribed in § 17-29-208. Licenses not renewed by January 31 of any year shall be considered delinquent and constitute grounds for disciplinary action by the board.

(c) Failure to receive the renewal notice shall not relieve the licensee or establishment of the duty to pay the renewal fee as prescribed.

History. Acts 1983, No. 325, §§ 4, 7; A.S.A. 1947, §§ 71-904, 71-907; Acts 1997, No. 839, § 5.

17-29-307. Revocation.

(a) The State Board of Embalmers and Funeral Directors may refuse to renew, or may suspend or revoke, a license issued under this subchapter if it finds, after hearing, that the funeral establishment does not meet any one (1) or all of the requirements set forth in this subchapter or § 17-29-201 et seq.

(b) No new license shall be issued to the owner of a funeral establishment or to a corporation controlled by that owner for one (1) year after the revocation of the license.

(c) Before any action can be taken under this section, the procedure for notice and hearing prescribed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall be followed.

History. Acts 1983, No. 325, § 4; A.S.A. 1947, § 71-904.

17-29-308. Grandfather clause.

Any person currently holding an embalmer's license or a funeral director's license or any funeral establishment holding a license on March 3, 1983, shall not be required to make application for, or submit to, an examination, but shall be entitled to a renewal of such a license, upon the same terms and conditions as are herein provided for the renewal of licenses of those who may be licensed after March 3, 1983, and such rules and regulations as the State Board of Embalmers and Funeral Directors may adopt in pursuance of this subchapter and § 17-29-201 et seq.

History. Acts 1983, No. 325, § 9; A.S.A. 1947, § 71-909.

17-29-309. Retired embalmers or funeral directors.

The State Board of Embalmers and Funeral Directors shall have the power to adopt appropriate rules and regulations regarding the issuance and renewal of license to individuals who shall have retired from the active practice of embalming or funeral directing based upon the age of the individuals or years of licensure.

History. Acts 1983, No. 325, § 9; A.S.A. 1947, § 71-909.

17-29-310. License requirements for out-of-state licenses.

Any person holding a valid, unrevoked, and unexpired license as an embalmer or funeral director in another state, territory, or provincial authority may apply for a license to practice in this state as an embalmer or funeral director, or both. Application shall be made by filing with the Secretary-treasurer of the State Board of Embalmers and Funeral Directors a certified statement from the secretary of the examining board of the state, United States territory, or provincial authority in which the applicant holds his or her license showing the basis upon which the license was issued. Upon receipt of the application, the Secretary-treasurer of the board may issue temporary working numbers, which are valid for one (1) year from the date of issuance. To obtain a license, the applicant shall pass an exam to prove his or her proficiency, including at least, but not limited to, a knowledge of the laws, rules, and regulations of this state pertaining to funeral service. The exam may be taken at one (1) of the regularly scheduled exam sessions set by the board. If the board is satisfied with the proficiency of the applicant, upon receipt of the prescribed fees in § 17-29-208, a license may be granted. Failure to meet testing requirements shall result in revocation of the temporary working numbers, and the applicant must reapply and pay the appropriate fee.

History. Acts 1983, No. 325, § 6; A.S.A. 1947, § 71-906; Acts 1997, No. 839, § 6; 1999, No. 1138, § 6.

17-29-311. Violations — Prohibitions.

(a) The State Board of Embalmers and Funeral Directors may issue letters of reprimand or caution, refuse to issue or renew a license, suspend or revoke any license for the practice of embalming or funeral directing, or may place the holder thereof on a term of probation after proper hearing upon finding the holder of the license to be guilty of acts of commission or omission, including the following:

- (1) Conviction of a felony;

(2) Misrepresentations made or fraud committed as a holder of a license;

(3) False or misleading advertising;

(4) Solicitation of dead human bodies by the licensee, his or her agents, assistants, or employees, whether the solicitation occurs after death or while death is impending, provided that this prohibition shall not be deemed to prohibit general advertising;

(5) Employment directly or indirectly of an apprentice, agent, assistant, employee, or other person on a part-time or full-time basis or on a commission for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;

(6) The direct or indirect payment or offer of payment of a commission by the licensee, his or her agents, assistants, or employees for the purpose of securing business;

(7) Allowing personnel unlicensed pursuant to this subchapter to execute contracts for funeral service;

(8) Aiding or abetting an unlicensed person to practice embalming or funeral directing;

(9) Violation of any provision of this subchapter and § 17-29-201 et seq.;

(10) Violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, transportation, or final disposition of dead human bodies;

(11) Fraud or misrepresentation in obtaining or renewing a license;

(12) Refusing to properly release a dead human body to the custody of the person or entity having the legal right to effect such a release;

(13) Willful failure to secure a permit for the removal or burial or other disposition of a dead human body;

(14) Knowingly making a false statement on a certificate of death;

(15) Violations of applicable law or regulation with regard to prearranged or prepaid funeral services or funeral merchandise. However, the proper regulatory agency for prearranged or prepaid funeral services or funeral merchandise shall have determined that such a violation has occurred;

(16) Discriminating in services because of race, creed, color, or national origin;

(17) Failure to meet continuing education requirements; or

(18) Failure to answer a complaint within the fifteen-day time period.

(b) No violation of subdivision (a)(4), (a)(5), (a)(6), or (a)(7) of this section shall be deemed to have occurred when in the ordinary course of business a routine sale of a prearranged or a prefinanced funeral or of funeral merchandise shall have been made.

(c) No person licensed pursuant to this subchapter shall remove or embalm a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death until permission of the coroner or medical examiner, or some other fully

qualified person acting in such a capacity if there is no coroner or medical examiner, has first been obtained.

(d) No public officer or employee, the official of any public institution, any physician or surgeon, or any other person having a professional relationship with any decedent shall send or cause to be sent to a funeral establishment or to any person licensed pursuant to this subchapter the remains of any deceased person without having first made due inquiry as to the desires of the next of kin and of the persons who may be chargeable with the funeral and expenses of the decedent. If any such kin is found, his or her authority and directions shall govern except in those instances in which the deceased made his or her arrangements.

(e) It shall be unlawful for any person, partnership, corporation, or association who has not been licensed or registered as specified in this subchapter to transact, practice, or hold himself or herself or itself out as transacting or practicing embalming or funeral directing or operating or maintaining a funeral establishment within this state.

(f) All dead human bodies not buried or otherwise disposed of within twenty-four (24) hours after death shall be embalmed as prescribed in this subchapter or § 17-29-201 et seq. or stored under refrigeration as determined by the State Board of Health.

(g) It shall be unlawful and a violation of this subchapter and § 17-29-201 et seq. to transport or otherwise transfer by common carrier any dead human body out of the State of Arkansas unless the body has been prepared and embalmed by a licensed embalmer of this state and a transit-burial permit has been issued by the local registrar of the county where death occurred. Any licensee of this state permitting this to be done shall be subject to the punishment spelled out in this subchapter and § 17-29-201 et seq.

(h) It shall be unlawful and a violation of this chapter for any person to engage in the practice of embalming or funeral directing or to hold himself or herself out to the public as a practicing embalmer or funeral director within the State of Arkansas without being the holder of a license.

History. Acts 1983, No. 325, § 11; A.S.A. 1947, § 71-911; Acts 1997, No. 839, § 7; 2003, No. 367, § 4.

CASE NOTES

Suspension.

There was no error in suspending the licensee's funeral director license for one year and imposing a \$1,500 fine, because the evidence was sufficient to support the determination by the Board of Embalmers and Funeral Directors that the licensee violated § 20-18-303, when the Division of Vital Records repeatedly and fruitlessly

contacted the licensee to obtain the demanded information and death certificate, and despite an offer by the Division to help facilitate the filing, the Division was required to take the extraordinary step of issuing the death certificate under its own authority. *Collins v. Ark. Bd. of Embalmers & Funeral Dirs.*, 2009 Ark. App. 498, — S.W.3d — (2009).

17-29-312. Suspension or revocation — Procedure.

(a) Whenever the State Board of Embalmers and Funeral Directors has reason to believe that any person to whom a license has been issued has become unfit to practice as an embalmer or funeral director or has violated any of the provisions of this subchapter and § 17-29-201 et seq., or any rules or regulations prescribed, or whenever written complaint charging the holder of a license with the violation of any provision of this subchapter or § 17-29-201 et seq. is filed with the board, it shall be the duty of the board to start an investigation within thirty (30) days of the receipt of the complaint.

(b) If from such an investigation it shall appear to the board that there is reasonable ground for belief that the accused may have been guilty of the violations charged, a time and place shall be set by the board for a hearing to determine whether or not the license of the accused shall be suspended or revoked. Any member of the board shall have the right to administer oaths to witnesses. The hearing and appeals therefrom shall be pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) No action to suspend, revoke, or cancel any license shall be taken by the board until the accused has been furnished with a statement of the charges against him or her and by whom he or she is charged and a notice of the time and place of hearing.

History. Acts 1983, No. 325, § 11;
A.S.A. 1947, § 71-911.

17-29-313. Permit required for crematorium construction.

(a) No crematoriums shall be constructed in this state without a permit issued by the State Board of Embalmers and Funeral Directors.

(b)(1) Upon receiving an application for the construction of a crematorium, the board shall cause to be published in a newspaper having general circulation within the county wherein the crematorium is proposed to be constructed a notice of the date and time of a public hearing on the application.

(2) The notice must be published no more than two (2) weeks nor less than one (1) week prior to the public hearing.

(3) The owners of property located within two hundred fifty feet (250') of the proposed site of the crematorium shall be notified by the board by registered mail.

(4) The public hearing shall be held in the city or county wherein the proposed crematorium is to be located.

History. Acts 1993, No. 365, § 1.
A.C.R.C. Notes. References to “this chapter” in subchapters 1-7 may not apply

to this section which was enacted subsequently.

SUBCHAPTER 4 — EMBALMERS AND FUNERAL DIRECTORS LAW — ENFORCEMENT

SECTION.

17-29-401. Criminal penalties.

17-29-402. Injunctions.

17-29-403. Civil penalties — Attorney's fees — Code of conduct.

SECTION.

17-29-404. Civil appeals.

17-29-405. Deposit and distribution of funds.

Effective Dates. Acts 1985, No. 217, § 8; Feb. 28, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that no penalty exists for the violation of Acts 1983, No. 325; that without penalties the law is unenforceable; and that this act is immediately necessary to provide a mechanism

for enforcing Acts 1983, No. 325. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-29-401. Criminal penalties.

Any person who, after February 28, 1985, practices the science of embalming, engages in the business of funeral directing, or conducts, maintains, manages, or operates a funeral establishment without a license issued under any provision of § 17-29-201 et seq. and § 17-29-301 et seq. shall be guilty of a Class A misdemeanor and subject to the punishment prescribed for Class A misdemeanors in the Arkansas Criminal Code.

History. Acts 1985, No. 217, § 5; A.S.A. 1947, § 71-930.

Publisher's Notes. The Arkansas Criminal Code is codified throughout Title 5. See Meaning of "this code" note to § 5-1-101.

Cross References. Class A misdemeanor, penalties for violation of, §§ 5-4-201, 5-4-401.

17-29-402. Injunctions.

Without posting bond, the State Board of Embalmers and Funeral Directors may petition the circuit court of the county where the violation occurred to enjoin violations of § 17-29-201 et seq. and § 17-29-301 et seq. or board regulations promulgated thereunder.

History. Acts 1985, No. 217, § 6; A.S.A. 1947, § 71-931.

17-29-403. Civil penalties — Attorney's fees — Code of conduct.

(a) Whenever the State Board of Embalmers and Funeral Directors, after a hearing conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., determines that a person

has violated any provision of § 17-29-201 et seq. and § 17-29-301 et seq., or any regulations promulgated by the board pursuant thereto, the board may impose a civil penalty on such a person not to exceed ten thousand dollars (\$10,000).

(b) If a person against whom a civil penalty has been imposed by the board fails to pay the penalty, the board may file an action in the Pulaski County Circuit Court to collect the civil penalty.

(c) If the board prevails in the action, the defendant shall be directed to pay, in addition to the civil penalty, reasonable attorney's fees and costs incurred by the board in prosecuting the action.

(d) Upon determination by the board that a licensee has committed malpractice, the board may suspend or revoke the license or impose the civil penalty provided in subsection (a) of this section or impose the civil penalty in addition to the suspension or revocation. Furthermore, the board may promulgate a code of conduct for its licensees, the violation of which may result in the imposition of the penalties prescribed in this subsection.

History. Acts 1985, No. 217, § 2; A.S.A. 1947, § 71-927; Acts 1989, No. 106, § 5; 1997, No. 839, § 8.

CASE NOTES

Fine.

There was no error in suspending the licensee's funeral director license for one year and imposing a \$1,500 fine, because the evidence was sufficient to support the determination by the Board of Embalmers and Funeral Directors that the licensee violated § 20-18-303, when the Division of Vital Records repeatedly and fruitlessly

contacted the licensee to obtain the demanded information and death certificate, and despite an offer by the Division to help facilitate the filing, the Division was required to take the extraordinary step of issuing the death certificate under its own authority. *Collins v. Ark. Bd. of Embalmers & Funeral Dirs.*, 2009 Ark. App. 498, — S.W.3d — (2009).

17-29-404. Civil appeals.

Any person aggrieved by the action of the State Board of Embalmers and Funeral Directors imposing civil penalties may appeal such a decision in the manner and under the procedure prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for appeals from administrative decisions.

History. Acts 1985, No. 217, § 3; A.S.A. 1947, § 71-928.

17-29-405. Deposit and distribution of funds.

All funds derived from civil penalties imposed by the State Board of Embalmers and Funeral Directors shall be deposited into one (1) or more depositories qualifying for the deposit of public funds. These funds shall be used by the board for administering the provisions of § 17-29-201 et seq. and § 17-29-301 et seq.

History. Acts 1985, No. 217, § 4; A.S.A. 1947, § 71-929.

SUBCHAPTER 5 — FUNERAL HOME ZONING AND MANAGEMENT

SECTION.
17-29-501. Definition.
17-29-502. Status of funeral homes.

SECTION.
17-29-503. Prerequisites to statutory benefits.

Effective Dates. Acts 1957, No. 241, § 5: approved Mar. 12, 1957. Emergency clause provided: "After consideration and investigation it is hereby declared that the proper conduct of funeral homes is a matter of necessity for carrying out in a dignified manner one of the necessary functions of the community life; that without a definite allocation of the funeral home to its proper place in community life the

proper progress of municipalities will be retarded and the citizens will be deprived of services in connection with the dead to which they are entitled. Therefore, an emergency is hereby declared and this act being necessary for the immediate preservation of the public peace, health and safety, the same shall take effect and be in full force from and after its passage."

17-29-501. Definition.

As used in this subchapter, "funeral home" means and embraces all functions pertaining to or connected with the preparation of human bodies for interment together with all the rights, services, and ceremonies usually attendant with such interment.

History. Acts 1957, No. 241, § 2; A.S.A. 1947, § 71-918.

17-29-502. Status of funeral homes.

- A funeral home is declared to be:
- (1) A service institution and, when conducted upon and in the manner hereinafter set forth, shall be so rated and considered in connection with:
 - (A) Zoning;
 - (B) The occupation and enjoyment of property; and
 - (C) The engaging in the conduct and management thereof; and
 - (2) A skilled profession.

History. Acts 1957, No. 241, § 1; A.S.A. 1947, § 71-917.

CASE NOTES

Nuisance.
This section does not prevent the establishment of a funeral home in a strictly residential district from being declared a

nuisance and enjoined or abated. Howard v. Etchieson, 228 Ark. 809, 310 S.W.2d 473 (1958).

17-29-503. Prerequisites to statutory benefits.

Any funeral home desiring to avail itself of the provisions of this subchapter shall conform to the following requirements:

(1) Be operated and managed by persons who are duly licensed as required by law;

(2) Be constructed of materials and in an architectural design in conformity with other structures in the immediate vicinity thereof;

(3) Be set apart from surrounding or adjacent property by a wall, hedge, or other type of protective screening;

(4) Have and maintain clean and adequate parking facilities for off-street parking for all persons availing themselves of the services of the funeral home or transacting business therewith; and

(5) Conform to and comply with all sanitary requirements and police regulations of the municipality in which the funeral home is located.

History. Acts 1957, No. 241, § 3; A.S.A. 1947, § 71-919.

SUBCHAPTER 6 — OUT-OF-STATE TUITION ASSISTANCE

SECTION.

17-29-601. Purpose.

17-29-602. Definition.

17-29-603. Program establishment — Authority of Department of Health.

SECTION.

17-29-604. Application — Certification — Priorities.

17-29-605. Limitation on assistance.

17-29-606. Program administration.

17-29-601. Purpose.

The purpose of this subchapter is to establish a permanent program to provide financial assistance to qualified Arkansas citizens attending accredited colleges of funeral service education outside of Arkansas.

History. Acts 1975, No. 180, § 4; A.S.A. 1947, § 71-925.

17-29-602. Definition.

As used in this subchapter, an “accredited college of funeral service education” means a college accredited by the American Board of Funeral Service Education.

History. Acts 1975, No. 180, § 2; A.S.A. 1947, § 71-923.

17-29-603. Program establishment — Authority of Department of Health.

(a) There is established within the Department of Health a program to provide financial assistance to residents of Arkansas attending accredited colleges of funeral service education outside of Arkansas.

(b) The department is authorized and designated as the state agency to administer the program established in this subchapter and to accept applications therefor and make grants to applicants to assist in defraying the cost of attending accredited colleges of funeral service education outside of Arkansas.

History. Acts 1975, No. 180, § 1; A.S.A. 1947, § 71-922.

17-29-604. Application — Certification — Priorities.

(a) Any resident of the State of Arkansas desiring to obtain an assistance grant under the provisions of this subchapter may make application to the Department of Health containing such information as the department shall deem necessary to determine the eligibility of the applicant to participate in the program.

(b) In order to qualify for an assistance grant, the applicant shall have served a one-year apprenticeship in the State of Arkansas under the supervision of an Arkansas-licensed funeral director and licensed embalmer prior to enrollment in an accredited college of funeral service education.

(c) If the applicant is found to be a bona fide resident of Arkansas and has served the apprenticeship, the department shall certify the student as qualified to participate under the program established in this subchapter to the extent that funds are available.

(d) The names of all qualified applicants shall be kept on a register in the order in which their application was received by the board of trustees. Applicants who have been accepted for admission by accredited colleges of funeral service education outside the state shall be given priority in receiving benefits under the provisions of this subchapter, to the extent that funds are available therefor, in the order in which the applications appear on the register maintained by the department.

History. Acts 1975, No. 180, § 2; A.S.A. 1947, § 71-923.

17-29-605. Limitation on assistance.

In no case shall an assistance grant made to an applicant under this program exceed the normal student tuition charge made by the accredited colleges of funeral service education in which the applicant is or will be enrolled or one thousand two hundred dollars (\$1,200) per individual, whichever is less.

History. Acts 1975, No. 180, § 1; A.S.A. 1947, § 71-922.

17-29-606. Program administration.

The Department of Health shall be the administering and disbursing agency for the State of Arkansas for making assistance grants to mortician students under the provisions of this subchapter. As disbursing agent, the department may expend sums that are specifically appropriated for the operation and administration of the program, but such expenditures shall be limited to the amount specifically appropriated for the program, and the award of any particular grant shall not obligate the State of Arkansas to maintain the program provided for in this subchapter except to the extent that specific appropriation is made for the program.

History. Acts 1975, No. 180, § 3; A.S.A. 1947, § 71-924.

SUBCHAPTER 7 — EYE ENUCLEATION

SECTION.

17-29-701. Authority.

17-29-702. Exemption from liability.

Effective Dates. Acts 2007, No. 839, § 10: Apr. 3, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the donation of parts of human bodies provides a significant source for protecting the health and safety of the citizens of Arkansas; and that continuous advances in the technology of human transplants and the inherent limitations incident to transplantation from dead bodies require that this act become effective immediately. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

17-29-701. Authority.

A funeral director or embalmer licensed pursuant to § 17-29-301 et seq. who has completed a course in eye enucleation and has received a certificate of competence from the Department of Ophthalmology of the University of Arkansas for Medical Sciences’ College of Medicine may enucleate the eyes of a deceased person pursuant to a disposition or gift thereof by the decedent or another person in the manner prescribed in the Revised Arkansas Anatomical Gift Act, § 20-17-1201 et seq., after proper certification of death by a physician.

History. Acts 1973, No. 425, § 1; A.S.A. 1947, § 71-920; Acts 2007, No. 839, § 2. **Amendments.** The 2007 amendment substituted “the Revised Arkansas Anatomical Gift Act, § 20-17-1201 et seq.” for “§ 20-17-601 et seq.”

17-29-702. Exemption from liability.

A properly certified funeral director or embalmer acting in accordance with the terms of this subchapter shall not be criminally or civilly liable for eye enucleation.

History. Acts 1973, No. 425, § 2; A.S.A. 1947, § 71-921.

**CHAPTER 30
ENGINEERS**

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS.
- 3. REGISTRATION.

Publisher’s Notes. Acts 1953, No. 214, § 1, provided that the purpose of the act, which comprises most of this chapter, was to amend and revise Acts 1925, No. 202, the majority of which it repealed, in order to better protect the life, health, safety, and welfare of the public. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-27-101 et seq.

RESEARCH REFERENCES

ALR. Validity and application of statute prohibiting use of name descriptive of engineering by business organization not practicing profession of engineering. 13 A.L.R.4th 676.
Am. Jur. 58 Am. Jur. 2d, Occup., §§ 69-75.
neer for negligence in highway or bridge construction or maintenance. 43 A.L.R.4th 911.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-30-101. Definition.
- 17-30-102. Penalties — Violations.
- 17-30-103. Injunction — Liability of board.

SECTION.

- 17-30-104. Construction.
- 17-30-105. Exemptions.

Cross References. Exemptions from contractors’ license provision, § 17-25-102.
License requirements to accompany invitation to bid, § 17-25-313.
Effective Dates. Acts 1953, No. 214, § 9: Mar. 4, 1953. Emergency clause provided: “It is hereby ascertained and declared by the General Assembly that the provisions of Acts 1925, No. 202 are, in the

light of subsequent technological and scientific advances, insufficient to properly safeguard the general public and that the provisions of this act are necessary for the public peace, health, safety and welfare. Therefore, an emergency is declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 131, § 4: became law without Governor's signature, Feb. 27, 1969. Emergency clause provided: "This act being necessary for the immediate preservation of the public health, peace and safety, an emergency is hereby declared, and the act shall take effect and be in force immediately after its passage."

Acts 1969, No. 196, § 6: Mar. 7, 1969. Emergency clause provided: "This act be-

ing necessary for the immediate preservation of the public health, peace and safety, an emergency is hereby declared, and the act shall take effect and be in force immediately after its passage."

Acts 1995, No. 834, § 5: Mar. 31, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary to clarify the authority of engineers licensed under the engineering licensing law; that this act accomplishes the same; and that such clarification should be accomplished as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-30-101. Definition.

As used in this chapter:

(1) "Consulting engineer" means a professional engineer whose principal occupation is the independent practice of engineering, whose livelihood is obtained by offering engineering services to the public, who serves clients as an independent fiduciary, who is devoid of public, commercial, and product affiliation that might tend to infer a conflict of interest, and who is cognizant of his or her public and legal responsibilities, and is capable of discharging them;

(2) "Engineer-intern" means a person who has qualified for, taken, and has passed an examination in the fundamental engineering subjects, as provided in this chapter;

(3)(A) "Firm" means any form of business entity that offers professional engineering services of its licensed personnel to the public.

(B) "Firm" does not include an individual licensee operating under his or her name;

(4)(A) "Practice of engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge in the mathematical, physical, and engineering sciences to services or creative work such as consultation, investigation, evaluation, planning, and design of engineering works and systems relating to the use of air, land, water, municipal and regional planning, forensic services, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications, any of which embraces service or work, either public or private, in connection with any utilities, structures, buildings, ma-

chines, equipment, processes, work systems, or projects including such architectural work as is incidental to the practice of engineering.

(B) A person practices or offers to practice engineering, within the meaning and intent of this chapter, who:

- (i) Practices any branch of the profession of engineering;
- (ii) By verbal claim, sign advertisement, letterhead, card, or in any other way represents himself or herself to be an engineer;
- (iii) Through the use of some other title implies that he or she is an engineer or that he or she is licensed under this chapter; or
- (iv) Holds himself or herself out as able to perform or does perform any engineering service or work or any other service designated by the practitioner that is recognized as engineering.

(C) The term “practice of engineering” does not include persons who merely operate or maintain machinery or equipment.

(D) The practice of engineering does not include the act of measuring land or drawing or reading plans or other work normally done by mechanics, technicians, professional surveyors, or draftsmen;

(5) “Professional engineer” means a person who has been duly licensed as a professional engineer by the State Board of Licensure for Professional Engineers and Professional Surveyors; and

(6) “Responsible charge” means direct control of, supervision of, and legal responsibility for all engineering work performed.

History. Acts 1953, No. 214, § 3; 1969, No. 196, § 1; A.S.A. 1947, § 71-1020; Acts 1993, No. 1041, § 1; 2009, No. 444, § 1.

Amendments. The 2009 amendment deleted former (1) and inserted (3), and redesignated the remaining subdivisions accordingly; substituted “practices or offers” for “shall be construed to practice or offer” in the introductory language of

(4)(B); substituted “licensed” for “registered” in (4)(B)(iii); substituted “that” for “which” in (4)(B)(iv); substituted “does” for “shall” in (4)(C) and (D); substituted “professional” for “land” in (4)(D); and, in (5), deleted “registered or” preceding “licensed” and substituted “State Board of Licensure for Professional Engineers and Professional Surveyors” for “board” in (5).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

CASE NOTES

Constitutionality.

Section 17-30-104, along with this section and § 17-15-102, are not void for vagueness as a person of ordinary intelligence could glean that architects plan and design buildings primarily intended for people to live and work in, and engineers plan and design buildings primarily in-

tended for accommodation of equipment, vehicles, goods, and/or processes. *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

Cited: *Holloway v. State Bd. of Architects*, 79 Ark. App. 200, 86 S.W.3d 391 (2002).

17-30-102. Penalties — Violations.

(a)(1) A person who practices or offers to practice engineering in this state in violation of this chapter and a person using or attempting to use as his or her own the certificate of licensure of another, who gives false evidence of any kind to the State Board of Licensure for Professional Engineers and Professional Surveyors or to any member of the board in obtaining a certificate of licensure, or who falsely impersonates any other practitioner or in any manner falsely implies that he or she is licensed or violates this chapter or the rules and regulations of the board is guilty of a misdemeanor.

(2) For each offense of which he or she is convicted, the person shall be punished by:

(A) A fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000);

(B) Imprisonment not to exceed three (3) months; or

(C) Both fine and imprisonment.

(3) Each violation and each day of any violation constitutes a separate offense.

(b) The following persons are guilty of a Class A misdemeanor for the first offense and a Class D felony for the second or any subsequent offense:

(1) A person who practices or offers to practice engineering in this state without being licensed under this chapter;

(2) A person, firm, partnership, organization, association, corporation, or other entity using or employing the words “engineer” or “engineering” or any modification or derivative thereof in its name or form or business activity, except as authorized in this chapter;

(3) A person presenting or attempting to use the certificate of licensure or the seal of another;

(4) A person who gives false or forged evidence of any kind to the board or to any member of the board in obtaining or attempting to obtain a certificate of licensure;

(5) A person who falsely impersonates a licensee of like or different name;

(6) A person who attempts to use an expired, suspended, revoked, or nonexistent certificate of licensure;

(7) A person who practices or offers to practice when not qualified;

(8) A person who falsely claims that he or she is licensed or authorized under this chapter; or

(9) A person who violates any of the provisions of this chapter.

History. Acts 1953, No. 214, § 7; A.S.A. 1947, § 71-1024; Acts 1993, No. 1041, §§ 1, 3; 1995, No. 1296, § 65; 2009, No. 444, § 1.

Amendments. The 2009 amendment rewrote the section.

17-30-103. Injunction — Liability of board.

(a)(1) Upon proper determination that a person has been found guilty of violating this chapter, the State Board of Licensure for Professional Engineers and Professional Surveyors may file a civil suit in the proper court in the jurisdiction in which the service or work is being performed.

(2) Upon affidavit, the board shall secure a writ of injunction, without bond, restraining and prohibiting the person from performance of the service or work then being done or about to commence.

(b) The members of the board, acting in good faith, are not personally liable under this proceeding.

History. Acts 1953, No. 214, § 4; 1957, No. 285, § 1; 1969, No. 131, § 1; 1969, No. 196, § 2; A.S.A. 1947, § 71-1021; Acts 2009, No. 444, § 1.

Amendments. The 2009 amendment

subdivided (a), and substituted “Licensure for Professional Engineers and Professional” for “Registration for Professional Engineers and Land” in (a)(1); and made minor stylistic changes.

17-30-104. Construction.

The provisions of this chapter affirm the legal authority of an engineer licensed under its provisions to provide consultation, investigation, evaluation, planning, and design of buildings intended for accommodation of equipment, vehicles, goods, and/or processes or other utilitarian functions, with human occupancy including office space as required for the support of these functions, provided the engineer is practicing within his or her area of competency as defined by this chapter.

History. Acts 1993, No. 1041, § 1; 1995, No. 834, § 1.

CASE NOTES

ANALYSIS

Constitutionality.

Unauthorized Practice of Architecture.

Constitutionality.

This section, along with § 17-30-101, and § 17-15-102, are not void for vagueness as a person of ordinary intelligence could glean that architects plan and design buildings primarily intended for people to live and work in, and engineers plan and design buildings primarily intended for accommodation of equipment, vehicles, goods, and/or processes. *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

Unauthorized Practice of Architecture.

Because this section allowed a licensed engineer to provide planning and design services for buildings intended for the accommodation of, among other things, equipment and human occupancy, the mere fact that an engineer engaged in the planning and design of a building was not enough to prove that the engineer engaged in unauthorized practice of architecture. *Holloway v. State Bd. of Architects*, 79 Ark. App. 200, 86 S.W.3d 391 (2002), *aff'd in part, reversed in part*, *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

17-30-105. Exemptions.

This chapter does not prevent the practice by:

(1) **OTHER PROFESSIONS.** The practice of any other legally recognized profession;

(2) **TEMPORARY PERMITS.**

(A)(i) The practice or offer to practice of engineering by a person not a resident of or having no established place of business in this state if the person is legally qualified by licensure to practice engineering in his or her own state or country.

(ii) An applicant may temporarily provide engineering services before becoming licensed under the reciprocal and comity licensure provisions of § 17-30-302(d) by obtaining a temporary permit.

(iii) The State Board of Licensure for Professional Engineers and Professional Surveyors shall specify by rule the qualifications necessary to obtain a temporary permit.

(iv) The qualifications necessary to obtain a temporary permit shall be similar to those necessary for original licensure.

(B) An applicant for a temporary permit shall submit an application for a temporary permit and for reciprocal or comity licensure to the board in writing and, after payment of a fee established by board regulation, may be granted a written permit for a definite period of time; and

(3) **EMPLOYEES AND SUBORDINATES.** The work of an employee or a subordinate of a person holding a certificate of licensure under this chapter or an employee of a person practicing lawfully under subdivision (2) of this section if the work does not include final engineering designs or decisions and is done under the direct supervision of and verified by a person holding a certificate of licensure under this chapter or a person practicing lawfully under subdivision (2) of this section.

History. Acts 1993, No. 1041, § 3; 2009, No. 444, § 2.

A.C.R.C. Notes. This section was formerly codified as § 17-27-106.

Amendments. The 2009 amendment rewrote (2); substituted “licensure” for “registration” twice in (3); and made minor stylistic changes.

SUBCHAPTER 2 — STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS

SECTION.

17-30-201. Creation — Members.

17-30-202. Officers and employees.

17-30-203. Powers, duties, and proceedings.

SECTION.

17-30-204. Claims against board members.

17-30-205. Duty of Attorney General.

Cross References. Liability of committee members of professional societies, § 17-1-102.

Effective Dates. Acts 1953, No. 214,

§ 9: Mar. 4, 1953. Emergency clause provided: “It is hereby ascertained and declared by the General Assembly that the provisions of Acts 1925, No. 202 are, in the

light of subsequent technological and scientific advances, insufficient to properly safeguard the general public and that the provisions of this act are necessary for the public peace, health, safety and welfare. Therefore, an emergency is declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 130, § 7: became law without Governor's signature, Feb. 27, 1969. Emergency clause provided: "This act being necessary for the immediate preservation of the public health, peace and safety, an emergency is hereby declared, and the act shall take effect and be in force immediately after its passage."

Acts 1969, No. 131, § 4: became law without Governor's signature, Feb. 27, 1969. Emergency clause provided: "This act being necessary for the immediate preservation of the public health, peace and safety, an emergency is hereby declared, and the act shall take effect and be in force immediately after its passage."

Acts 1969, No. 196, § 6: Mar. 7, 1969. Emergency clause provided: "This act being necessary for the immediate preservation of the public health, peace and safety, an emergency is hereby declared, and the act shall take effect and be in force immediately after its passage."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation

of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-30-201. Creation — Members.

(a) There is created a State Board of Licensure for Professional Engineers and Professional Surveyors, consisting of nine (9) members to be appointed by the Governor.

(b)(1) Each member of the board shall be a citizen of the United States, at least thirty-five (35) years of age, and shall have been a resident of this state for at least three (3) years immediately preceding his or her appointment.

(2) Five (5) members shall be professional engineers of at least ten (10) years' active experience, of good standing in their profession, and licensed as professional engineers at the time of their appointments.

(3) One (1) member shall be a professional engineer and a professional surveyor of at least ten (10) years' active experience in both, of good standing in both professions, and licensed as both a professional engineer and a professional surveyor at the time of his or her appointment.

(4) One (1) member shall be a professional surveyor of at least ten (10) years' active experience, of good standing in his or her profession, and licensed as a professional surveyor at the time of his or her appointment.

(5)(A) Two (2) members of the board shall:

(i) Not be actively engaged as or retired as professional engineers or professional surveyors;

(ii) Be appointed from the state at large, subject to confirmation by the Senate; and

(iii) Be full voting members but shall not participate in the grading of examinations.

(B) One (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly.

(C) The two (2) positions may not be held by the same person.

(c) The term of office for each member appointed shall be four (4) years.

(d) Each member shall hold office until his or her successor is appointed and qualified.

(e) The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty.

(f) Vacancies on the board, however created, shall be filled by the Governor for the unexpired term.

(g) Each member of the board shall serve without compensation, except that the board member may receive expense reimbursement under § 25-16-901 et seq.

History. Acts 1925, No. 202, § 3; Pope's Dig., § 12158; Acts 1969, No. 130, §§ 1, 2, 4; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 71-1003 —

71-1003.3; Acts 1993, No. 1041, § 2; 1997, No. 250, § 138; 2005, No. 1178, § 6; 2009, No. 444, § 3.

Publisher's Notes. The terms of the members of the State Board of Licensure for Professional Engineers and Surveyors,

other than the representatives of consumers and the elderly, are arranged so that one term expires every fourth year and two terms expire in the intervening years.

Acts 1969, No. 130, § 3, provided that the act would not be construed to change or alter the personnel or tenure of office of any member of the State Board of Registration for Professional Engineers, but the members of the State Board of Registration for Professional Engineers would become and continue to serve as members of the Arkansas State Board of Registration for Professional Engineers and Land Surveyors.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

Amendments. The 2009 amendment substituted "Licensure for Professional Engineers and Professional" for "Registration for Professional Engineers and Land" in (a); in (b), substituted "licensed" for "registered" in three places and inserted "professional" preceding "surveyors" in (b)(5)(A)(i); and made minor stylistic changes.

17-30-202. Officers and employees.

The State Board of Licensure for Professional Engineers and Professional Surveyors shall:

- (1) Select its own officers; and
- (2) Have the power to appoint an executive director who shall serve as secretary-treasurer of the board.

History. Acts 1953, No. 214, § 4; 1957, No. 285, § 1; 1969, No. 131, § 1; 1969, No. 196, § 2; A.S.A. 1947, § 71-1021; Acts 1993, No. 1041, § 2; 2009, No. 444, § 3.

Amendments. The 2009 amendment substituted "Licensure" for "Registration" and "Professional" for "Land" in the introductory language.

17-30-203. Powers, duties, and proceedings.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors shall:

- (1) Meet not less than two (2) times a year;
- (2) Have a seal, which among other things must be affixed to every certificate of licensure; and
- (3) Require that all plans, specifications, plats, and reports issued by an engineer shall be stamped with a seal of a design authorized by the board.

(b) Within the limits prescribed by this chapter, the board:

- (1) May determine the persons entitled to be licensed and those whose licenses shall be suspended or revoked;
- (2) Shall fix the fees and renewal fees;
- (3) Shall hold examinations for applicants for licensure not less than two (2) times a year; and

(4) May do any other things necessary to its duties, including the adoption of rules and regulations not inconsistent with this chapter or the Arkansas Constitution and other laws.

(c)(1) The board may subpoena witnesses and compel their attendance and also may require the production of books, papers, and documents.

(2) Any member of the board may administer oaths or affirmations to witnesses before the board.

(d) All expenses incurred by the board for the administration of this chapter may be paid by the board.

History. Acts 1953, No. 214, § 4; 1957, No. 285, § 1; 1969, No. 131, § 1; A.S.A. 1947, § 71-1021; Acts 2009, No. 444, § 3.

Amendments. The 2009 amendment substituted “licensure” for “registration”

or variant throughout the section; substituted “Professional” for “Land” in (a); subdivided (c); and made minor stylistic changes.

17-30-204. Claims against board members.

A person making a claim against a member of the State Board of Licensure for Professional Engineers and Professional Surveyors has the burden of proving the absence of good faith.

History. Acts 1953, No. 214, § 4; 1969, No. 196, § 2; A.S.A. 1947, § 71-1021; Acts 2009, No. 444, § 3.

Amendments. The 2009 amendment

substituted “Licensure” for “Registration” and “Professional” for “Land,” and made a minor stylistic change.

17-30-205. Duty of Attorney General.

- (a) The Attorney General or his or her assistant shall act as legal advisor to the State Board of Licensure for Professional Engineers and Professional Surveyors and render such legal assistance as necessary in carrying out this chapter.
- (b) It is the duty of the Attorney General to enforce this chapter and to prosecute any person violating this chapter.
- (c) The board may employ counsel and necessary assistance to aid in the enforcement of this chapter, and the compensation and expenses shall be paid from the funds of the board.

History. Acts 1993, No. 1041, § 3; 2009, No. 444, § 3.

Amendments. The 2009 amendment

substituted “Licensure” for “Registration” and “Professional” for “Land” in (a), and made minor stylistic changes.

CASE NOTES

Cited: Holloway v. Ark. State Bd. of Architects, 352 Ark. 427, 101 S.W.3d 805 (2003).

SUBCHAPTER 3 — REGISTRATION

SECTION.	SECTION.
17-30-301. Licensure requirement — Ex-ceptions.	Inactive — Reinstatement.
17-30-302. Applicant qualifications — Examination.	17-30-305. Suspension or revocation.
17-30-303. Authorization certificates.	17-30-306. Disciplinary action — Procedures.
17-30-304. Fees — Renewal of certificates — Disposition of funds —	

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1953, No. 214, § 9: Mar. 4, 1953. Emergency clause provided: "It is hereby ascertained and declared by the General Assembly that the provisions of Acts 1925, No. 202 are, in the light of subsequent technological and scientific advances, insufficient to properly safeguard the general public and that the provisions of this act are necessary for the

public peace, health, safety and welfare. Therefore, an emergency is declared to exist and this act shall be in full force and effect from and after its passage and approval."

Acts 1969, No. 196, § 6: Mar. 7, 1969. Emergency clause provided: "This act being necessary for the immediate preservation of the public health, peace and safety, an emergency is hereby declared, and the act shall take effect and be in force immediately after its passage."

RESEARCH REFERENCES

Ark. L. Rev. Case Notes — Equity — Injunctions — Unlicensed Practice of a Profession, 11 Ark. L. Rev. 177.

Some Legal and Other Problems of Professional Corporations in Arkansas, 24 Ark. L. Rev. 292.

17-30-301. Licensure requirement — Exceptions.

A person, unless licensed under the present law, shall not practice or offer to practice engineering unless that person has been licensed under this chapter, except that:

- (1) An engineer-intern may engage in such a practice as an employee of or under the supervision of a licensed engineer;
- (2) A person holding a temporary permit under § 17-30-105(2) may temporarily provide engineering services for the purpose and in the manner provided by the State Board of Licensure for Professional Engineers and Professional Surveyors when granted the temporary license;
- (3) A person may engage in such a practice if that person is employed by a professional engineer and acts under his or her supervision and direction; and
- (4) A firm may not engage in the practice of engineering as a profession except under § 17-30-303.

History. Acts 1953, No. 214, § 2; A.S.A. 1947, § 71-1019; Acts 1987, No. 51, § 1; 1993, No. 1041, § 3; 2009, No. 444, § 4.

Amendments. The 2009 amendment

substituted "licensed" for "registered" in three places; rewrote (2) and (4); and made minor stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

17-30-302. Applicant qualifications — Examination.

(a) Except as provided hereafter, each applicant for licensure shall submit to an examination by the State Board of Licensure for Professional Engineers and Professional Surveyors and, if found to be qualified, shall be registered, depending on his or her education and experience, either as:

(1) A professional engineer; or

(2) An engineer-intern.

(b)(1)(A) A person may apply to be licensed as an engineer if he or she is a graduate of an Accreditation Board for Engineering and Technology, Inc., approved engineering curriculum, or its equivalent as approved by the State Board of Licensure for Professional Engineers and Professional Surveyors, of four (4) years from a school or college approved by the State Board of Licensure for Professional Engineers and Professional Surveyors and has had four (4) years' experience in engineering work of a type satisfactory to the board.

(B) In its discretion, the State Board of Licensure for Professional Engineers and Professional Surveyors may consider satisfactory graduate study in engineering equal to one (1) year's experience.

(2) This subsection shall be effective July 1, 2001.

(c)(1) A person may apply to be registered as an engineer-intern if he or she is a graduate of an approved Accreditation Board for Engineering and Technology, Inc., or its equivalent as approved by the State Board of Licensure for Professional Engineers and Professional Surveyors, engineering curriculum of four (4) years from a school or college approved by the State Board of Licensure for Professional Engineers and Professional Surveyors.

(2) This subsection shall be effective July 1, 1997.

(d) The State Board of Licensure for Professional Engineers and Professional Surveyors in its discretion may waive examination of a person applying to be licensed as an engineer or an engineer-intern if he or she is licensed either as an engineer or an engineer-in-training or an engineer-intern by the licensing authority of any state or territory or possession of the United States or of any foreign country if his or her qualifications at the time he or she was licensed are not less than those provided in this chapter.

History. Acts 1953, No. 214, § 5; A.S.A. 1947, § 71-1022; Acts 1993, No. 1041, § 3; 2009, No. 444, § 4.

Amendments. The 2009 amendment substituted "licensed" for "registered" or

variant throughout the section; substituted "Professional" for "Land" in (a); subdivided (b)(1); and made minor stylistic changes.

17-30-303. Authorization certificates.

(a)(1) The practice or offer to practice for others, as defined in § 17-30-101, by individuals licensed under this chapter through a firm is permitted, subject to this chapter if:

(A) One (1) or more of the officers, agents, employees, partners, members, or managers of the firm designated as being responsible for the engineering activities and decisions is a professional engineer under this chapter or under the engineering licensure law of another state, territory, or possession of the United States or the District of Columbia;

(B) All personnel of the firm who act in its behalf as professional engineers are licensed under this chapter or are persons lawfully practicing under § 17-30-105; and

(C) The firm has been issued a certificate of authorization by the State Board of Licensure for Professional Engineers and Professional Surveyors as hereinafter provided.

(2) All final drawings, specifications, plans, reports, calculations, or other engineering papers or documents involving the practice of engineering, as defined in this chapter, when issued or filed for public record, shall be dated and bear the signature and seal of the professional engineer qualified in the appropriate branch of engineering who prepared them or under whose immediate direction they were prepared.

(b)(1) A firm desiring a certificate of authorization shall file with the board an application, using the form provided by the board, providing all the information required by the board, and also listing the names and addresses of the individual or individuals duly licensed to practice engineering in this state who shall be in responsible charge of the practice of engineering in the state through the firm, and other information, which must accompany the annual renewal fee.

(2) If there is a change in any of these persons during the year, the change shall be designated on the same form and filed with the board within thirty (30) days after the effective date of the change.

(3) If all of the requirements of this section are met, the board shall issue a certificate of authorization to the firm, and the firm may contract for and collect fees for furnishing engineering services.

(c) This chapter does not prevent a firm from performing engineering services for the firm itself or a subsidiary or an affiliate of the firm.

(d)(1) The firm shall not be relieved of responsibility for the conduct or acts of its agents, employees, officers, or partners by reason of its compliance with this section.

(2) An individual practicing engineering under this chapter shall not be relieved of responsibility for engineering services performed by reason of employment or other relationship with a firm holding an authorization certificate.

(e) A certificate of authorization shall be renewed as provided in this chapter.

(f) An engineer who renders occasional, part-time, or consulting engineering services to or for a firm may not, for the purpose of this section, be designated as being responsible for the professional activities of the firm.

(g)(1) The Secretary of State shall not issue a certificate of incorporation to an applicant or a registration as a foreign firm to a firm that

includes among the objectives for which it is established any of the words “engineer”, “engineering”, or any modification or derivation thereof unless the board of licensure for this profession has issued for the applicant a certificate of authorization or a letter indicating the eligibility of the applicant to receive such a certificate.

(2) The firm applying shall supply such a certificate or letter from the board with its application for incorporation or registration.

(h) The Secretary of State shall decline to register any trade name or service mark that includes words as set forth in subsection (g) of this section or modifications or derivatives thereof in its firm name or logos except those firms holding authorization certificates issued under this section.

History. Acts 1993, No. 1041, § 3; 2009, No. 444, § 4.

A.C.R.C. Notes. As enacted, subsections (g) and (h) began: “Effective August 13, 1994.”

Amendments. The 2009 amendment substituted “licensed” for “registered” or variant and “firm” for “corporation” throughout the section; in (a), substituted “firm” for “corporation as officers, employees, or agents” in (a)(1), substituted “offic-

ers, agents, employees, partners, members, or managers” for “corporate officers” in (a)(1)(A), and substituted “Professional” for “Land” in (a)(1)(C); in (b)(1), substituted “providing all the information required by the board” for “listing the names and addresses of all officers and board members of the corporation,” and inserted “listing the names and addresses”; and made minor stylistic changes throughout the section.

17-30-304. Fees — Renewal of certificates — Disposition of funds — Inactive — Reinstatements.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors may establish application fees, certificate fees, and renewal fees as it deems necessary within the guidelines of the State of Arkansas.

(b) The board may establish guidelines and require a demonstration of continuing professional competency as a condition of renewal or relicensure.

(c) All certificates shall be renewed annually or biennially at the discretion of the board.

(d) The fees shall be deposited into a bank designated by the board, and the officer or employee who collects the fees and disburses them shall be required to execute a corporate surety bond for the proper accounting thereof.

(e)(1) A professional engineer or engineer-intern licensed under this chapter who is not engaged in the practice of engineering may request that the board grant him or her inactive status by placing his or her name on the board’s inactive roll.

(2) A professional engineer or engineer-intern who is granted inactive status maintains the right to seek active license status at a later time.

(3) A professional engineer whose license is inactive may return to active status by:

(A) Notifying the board in advance of his or her intention to return to active status;

(B) Paying the appropriate fees; and

(C) Meeting all requirements of the board, including demonstration of professional competency.

(4) Inactive status shall continue so long as the license holder pays the annual fee under the board's rules.

(f) A professional engineer or engineer-intern whose license has not been renewed may have it reinstated by meeting all requirements of the board including:

(1) Paying all applicable fees and penalties;

(2) Demonstrating continuing professional competency; and

(3) Reexamination.

History. Acts 1953, No. 214, § 6; 1969, No. 196, § 3; A.S.A. 1947, § 71-1023; Acts 1993, No. 1041, § 3; 2001, No. 591, § 1; 2009, No. 444, § 4.

A.C.R.C. Notes. The operation of subsection (d) as regards the bond requirement was suspended by adoption of a self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The provision may again become

effective upon cessation of coverage under that program. See § 21-2-703.

Publisher's Notes. This section was formerly codified as § 17-27-303 [now § 17-30-303].

Amendments. The 2009 amendment substituted "Licensure" for "Registration" and "Professional" for "Land" in (a); added (e) and (f); and made minor stylistic changes.

17-30-305. Suspension or revocation.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors may suspend or revoke, or refuse to issue, restore, or renew a certificate of licensure of, or place on probation, or fine, or reprimand, or any combination of these, any professional engineer who is:

(1) Found guilty of:

(A) The practice of fraud or deceit in obtaining or attempting to obtain or renew a certificate of licensure or certificate of authorization;

(B) Negligence, incompetency, or misconduct in the practice of engineering;

(C) Failure to comply with this chapter or any of the rules or regulations pertaining to this chapter;

(D) Discipline by another state, territory, the District of Columbia, a foreign country, the United States Government, or any other governmental agency, if at least one (1) of the grounds for discipline is the same or substantially equivalent to those contained in this section;

(E) Failure within thirty (30) days to provide information requested by the board as a result of a formal or informal complaint to the board that would indicate a violation of this chapter;

(F) Knowingly making false statements or signing false statements, certificates, or affidavits to induce payment;

(G) Aiding or assisting another person in violating this chapter or the rules or regulations pertaining to this chapter;

(H) Violating any terms of probation imposed by the board or using a seal or practicing engineering while the professional engineer's license is suspended, revoked, nonrenewed, or inactive;

(I) Signing, affixing the professional engineer's seal, or permitting the professional engineer's seal or signature to be affixed to any specifications, reports, drawings, plans, design information, construction documents, or calculations, or revisions thereof that have not been prepared or completely checked by the professional engineer or under the professional engineer's direct supervision or control;

(J) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(K) Providing false testimony or information to the board; or

(L) Habitual intoxication or addiction to the use of drugs or alcohol; or

(2) Convicted of or enters a plea of nolo contendere to:

(A) A felony;

(B) A crime of which an essential element is dishonesty; or

(C) A crime that is directly related to the practice of engineering.

(b) In addition to any other penalty provided in this section, a person who violates this chapter or any rule or regulation of the board shall pay to the board a civil penalty in an amount determined by the board of not more than five thousand dollars (\$5,000) for each offense.

(c)(1) The board shall adopt rules of professional conduct under § 17-30-203 that shall be made known in writing to every applicant for licensure under this chapter and published in the roster.

(2) The publication shall constitute due notice to all licensees.

(3) The board may revise and amend these rules of professional conduct from time to time and shall notify each licensee in writing of the revisions or amendments.

(d) The board may:

(1) Revoke a certificate of authorization;

(2) Suspend a certificate of authorization for a period of time not exceeding two (2) years of any firm where one (1) or more of its officers or directors have been found guilty of any conduct that would authorize a revocation or suspension of their certificates of licensure under this section;

(3) Place on probation for a period of time and subject to such conditions as the board may specify; or

(4) Levy a fine in an amount not to exceed five thousand dollars (\$5,000) for each count or separate offense.

(e) The board may discipline nonlicensees that violate this chapter by the levy of a fine in an amount not to exceed five thousand dollars (\$5,000) for each offense.

History. Acts 1953, No. 214, § 4; A.S.A. 1947, § 71-1021; Acts 1993, No. 1041, § 3; 2009, No. 444, § 4.

Publisher's Notes. This section was formerly codified as § 17-27-304 [now § 17-30-304].

Amendments. The 2009 amendment substituted "licensure" for "registration" throughout the section; in (a), deleted (a)(3), inserted present (a)(2), redesignated the subdivisions, and substituted

"Professional" for "Land" in the introductory language; substituted "five thousand dollars (\$5,000)" for "two thousand dollars (\$2,000)" in (b), (d)(4), and (e); in (c), subdivided the text, substituted "applicant" for "registrant" in the introductory language, and substituted "licensee" for "registrant" or variant in (c)(2) and (c)(3); substituted "nonlicensees" for "nonregistrants" in (e); and made minor stylistic changes throughout the section.

17-30-306. Disciplinary action — Procedures.

(a) A person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct against any individual licensee or against a firm holding a certificate of authorization.

(b) All charges, unless dismissed by the State Board of Licensure for Professional Engineers and Professional Surveyors as unfounded or trivial or unless settled informally shall be heard by the board within six (6) months after the date on which they were preferred.

(c)(1) The time and place for the hearings shall be fixed by the board and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of the individual licensee or firm holding a certificate of authorization at least twenty (20) days before the date fixed for the hearing.

(2) At the hearing, the accused individual licensee or firm holding a certificate of authorization may appear in person or by counsel, or both, to cross-examine witnesses in his or her or its defense and to produce evidence and witnesses in his or her or its own defense.

(3) If the accused person or firm fails or refuses to appear, the board may proceed to hear and determine the validity of the charges.

(d)(1) If after such a hearing a majority of the board votes in favor of sustaining the charges, the board may:

(A) Reprimand;

(B) Refuse to issue, restore, or renew;

(C) Place on probation for a period of time; or

(D) Subject to conditions specified by the board, suspend or revoke the individual's certificate of licensure or the firm's certificate of authorization.

(2) In addition to or in lieu of any of the items in subdivision (d)(1) of this section, the board may fine the individual or firm in an amount not to exceed five thousand dollars (\$5,000) for each offense.

(e) An individual licensee who has a certificate of licensure or a firm that has a certificate of authorization or a nonlicensee aggrieved by any action of the board in levying a fine or denying, suspending, refusing to issue, restoring, renewing, or revoking his or her certificate of licensure or its certificate of authorization may appeal to the proper court under normal civil procedures.

(f)(1) A penalty assessed under § 17-30-305 shall be assessed in a proceeding as provided in this section.

(2) Unless the amount of the penalty is paid within fifty (50) days after the order becomes final, the order shall constitute a judgment and shall be filed and execution issued thereon in the same manner as any other judgment of a court of record.

(g) The board may, upon petition of an individual licensee or firm holding a certificate of authorization, reissue a certificate of licensure or authorization if a majority of the members of the board vote in favor of such issuance.

History. Acts 1993, No. 1041, § 3; 2001, No. 591, § 2; 2009, No. 444, § 4.

Amendments. The 2009 amendment substituted “licensee” for “registrant,” “licensure” for “registration,” and “firm” for “corporation” throughout the section; sub-

stituted “Professional” for “Land” in (b), in (d), subdivided (d)(1) and substituted “five thousand dollars (\$5,000)” for “two thousand dollars (\$2,000)” in (d)(2); substituted “nonlicensee” for “nonregistrant” in (e); and made minor stylistic changes.

CHAPTER 31

FORESTERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. THE ARKANSAS STATE BOARD OF REGISTRATION FOR FORESTERS.
3. CERTIFICATE OF REGISTRATION.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-28-101 et seq.

Effective Dates. Acts 1969, No. 535, § 26: became law without Governor’s signature, Apr. 18, 1969. Emergency clause provided: “It is hereby found and declared by the General Assembly that certain persons are practicing and offering to practice professional forestry within the state without proper qualifications and that the passage of this act is necessary in order to safeguard the public welfare of this state

and to protect the people of this state against the unauthorized, unqualified and improper practice of forestry, as well as to upgrade the practice of forestry, and that only by the immediate operation of this act can these conditions be alleviated. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage and approval.”

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-31-101. Title and purpose.
- 17-31-102. Definitions.
- 17-31-103. Administrative procedure.

SECTION.

- 17-31-104. Enforcement.
- 17-31-105. Violations — Penalties.

17-31-101. Title and purpose.

(a) This chapter may be referred to and cited as the “State Board of Registration for Foresters Act”.

(b) The purpose of this chapter is to ensure that no person shall use in connection with the person’s name, or otherwise assume, use, or advertise any title or description that the person is a forester, unless the person is registered as herein provided.

History. Acts 1969, No. 535, § 1; A.S.A. 1947, § 71-2401; Acts 1999, No. 993, § 1.

17-31-102. Definitions.

As used in this chapter:

(1) “Board” means the Arkansas State Board of Registration for Foresters;

(2)(A) “Forestry” means the science, the art, and the practice of managing, harvesting, and using the natural resources which occur on and in association with forestlands. It also means the care and management of forestlands for repeated crops of raw wood products, at annual or somewhat longer intervals, and for allied uses, such as watershed protection, recreation, wildlife, and grazing.

(B) However, nothing contained in this chapter shall be construed as preventing any person, firm, partnership, or corporation from managing woodlands, forests, or trees, or from buying or selling timber, or from harvesting any products therefrom, or from performing tree planting, timber stand improvement, or other vendor services on any land, in any manner desired;

(3)(A) “Practice of forestry” includes services for hire such as consultation, investigation, evaluation, planning, or responsible supervision of any forestry activity in connection with public or private lands. The practice of forestry also includes teaching of forestry subjects at the college or university level and research in forestry, or a combination of teaching and research.

(B) The practice of forestry shall not include services rendered for wages, salary, or payment received for the buying, selling, cutting, handling, or processing of timber, or wages, salary, or payment received for tree planting, timber stand improvement, or other vendor service activities on the forestlands of the owner thereof or on the forestlands of another; and

(4) “Registered forester” means a person holding a valid certificate of registration issued pursuant to this chapter.

History. Acts 1969, No. 535, § 3; A.S.A. 1947, § 71-2403; Acts 1999, No. 993, § 2.

17-31-103. Administrative procedure.

All proceedings of the Arkansas State Board of Registration for Foresters shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., in addition to the requirements set forth in this chapter.

History. Acts 1969, No. 535, § 23;
A.S.A. 1947, § 71-2423.

17-31-104. Enforcement.

(a) The Attorney General, all prosecuting attorneys, and duly constituted officers of the law of this state or political subdivision thereof shall be authorized to enforce the provisions of this chapter and to prosecute any person violating them.

(b) The Arkansas State Board of Registration for Foresters is charged with the duty of seeing that the provisions of this chapter are enforced.

History. Acts 1969, No. 535, § 22;
A.S.A. 1947, § 71-2422; Acts 1999, No.
993, § 3.

17-31-105. Violations — Penalties.

(a) Any person required to be registered under this chapter shall be guilty of a Class A misdemeanor if that person:

(1) Practices or offers to practice forestry without a valid certificate of registration issued pursuant to this chapter;

(2) Claims to be a forester certified under this chapter without being so certified;

(3) In any way tends to convey the impression that he or she is a forester certified under the provisions of this chapter without being so registered;

(4) Uses as his or her own the certificate of registration of another;

(5) Gives false or forged evidence to the Arkansas State Board of Registration for Foresters;

(6) Uses an expired or revoked certificate; or

(7) Violates any provision of this chapter.

(b) A Class A misdemeanor shall also be charged against a registered forester, subject to penalties as prescribed in subsection (a) of this section, who endorses any plan, specification, estimate, report, or map unless he or she actually prepared the plan, specification, estimate, report, or map or has been in actual charge or supervision of the preparation of it.

History. Acts 1969, No. 535, §§ 16, 22;
A.S.A. 1947, §§ 71-2416, 71-2422; Acts
1999, No. 993, § 4; 2005, No. 1994, § 200.

SUBCHAPTER 2 — THE ARKANSAS STATE BOARD OF REGISTRATION FOR FORESTERS

SECTION.

- 17-31-201. Creation — Selection and compensation of members.
 17-31-202. Removal of members.
 17-31-203. Organization and proceedings.

SECTION.

- 17-31-204. Powers.
 17-31-205. Staff and employees.
 17-31-206. Compensation of witnesses.
 17-31-207. Records and reports.
 17-31-208. Disposition of funds.

Effective Dates. Acts 1971, No. 122, § 6: Feb. 19, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is presently a need for revision of the law relating to the registration of foresters in order to provide for one member of the board to be selected from an agency of the U. S. Government and also to revise the annual fee for renewing foresters' certificates of registration and that the provisions of this act should be given effect immediately to accomplish the above stated changes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be

muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-31-201. Creation — Selection and compensation of members.

(a) The Arkansas State Board of Registration for Foresters is created to administer the provisions of this chapter.

(b)(1) The board shall consist of six (6) members appointed by the Governor, with the advice and consent of the Senate. Each member shall be a citizen of the United States of America and a registered voter and resident of the State of Arkansas.

(2)(A) Five (5) members of the board shall be foresters who have the qualifications required for registration under § 17-31-302 and who have been engaged in forestry for at least twelve (12) years. Each member of the board appointed hereunder shall be registered and certified under this chapter.

(B)(i) One (1) member shall be selected from the forest products industry.

(ii) One (1) member shall be selected from the Arkansas Forestry Commission.

(iii) One (1) member shall be selected from an agency of the United States Government.

(iv) One (1) member shall be selected from the staff of the school of forestry.

(v) One (1) member shall be selected from private forestry consultants.

(C) At least one (1) member shall be a graduate of an approved forestry school within the State of Arkansas.

(3) One (1) member of the board shall not be actively engaged in or retired from the forestry profession. That member shall represent consumers. He or she shall be appointed from the state at large subject to confirmation by the Senate and shall be a full voting member but shall not participate in the grading of examinations.

(c)(1) Appointments shall be for a term of five (5) years or, in the event of vacancies, for the period of the unexpired term of the vacancy being filled.

(2) The chair of the Arkansas Division, Ouachita Society of American Foresters, duly authorized and acting on behalf of the Arkansas division, shall make nominations described in subdivision (b)(2) of this section within thirty (30) days from the receipt of notice from any person of the occurrence of a vacancy on the board.

(d) Each member of the board shall receive a certificate of appointment from the Governor and before beginning the term of office shall file with the Secretary of State a written oath or affirmation relative to the faithful discharge of the official duty.

(e) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1969, No. 535, §§ 4-6; 1971, No. 122, § 1; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; A.S.A. 1947, §§ 6-617 — 6-619, 71-2404 — 71-2406; Acts 1997, No. 250, § 139; 1999, No. 993, § 5.

Publisher's Notes. The terms of the members of the Arkansas State Board of Registration for Foresters, other than the

consumer representative, are arranged so that one term expires every year.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

17-31-202. Removal of members.

(a) The Governor may remove any member of the Arkansas State Board of Registration for Foresters for misconduct, incompetency, or neglect of duty.

(b) Before the Governor can remove a member for cause, he or she must serve the member with a written notice of the charge or charges against him or her and afford him or her an opportunity to be heard publicly on such charge or charges.

(c)(1) If the member thus served does not request a public hearing within ten (10) days from being served, the Governor may proceed with the member's removal.

(2) If the member does request a public hearing, it shall be heard by a special committee composed of three (3) persons, not members of the board, namely:

(A) The Chief Justice of the Supreme Court or a substitute selected by the Chief Justice, who shall be the chair;

(B) The chair of the Arkansas Division, Ouachita Society of American Foresters; and

(C) A faculty member selected by the Arkansas Division, Ouachita Society of American Foresters from the school or departments of forestry in Arkansas.

(d) The recommendation or decision of this committee shall be binding upon the Governor.

(e) A copy of the charge or charges, a transcript of the record of the hearing, and a copy of the recommendation shall be filed with the Secretary of State.

(f) If a board member is removed, his or her vacancy shall be filled for the unexpired term by appointment by the Governor as provided in § 17-31-201.

History. Acts 1969, No. 535, § 7; A.S.A. 1947, § 71-2407; Acts 1999, No. 993, § 6.

17-31-203. Organization and proceedings.

(a) The Arkansas State Board of Registration for Foresters shall elect annually from its membership the following officers:

(1) A chair;

(2) A vice chair; and

(3) A secretary.

(b) A quorum of the board shall consist of not fewer than three (3) members, and no action shall be official without at least three (3) votes in accord.

(c) The board shall hold at least two (2) regular meetings each year. Special meetings shall be held at such time and place as shall be specified by call of the chair or the secretary. Notice of all meetings shall be given in writing to each member by the secretary.

(d) The board shall be domiciled and maintain its principal office in Little Rock and shall hold its meetings in its principal office, unless the chair finds a necessary reason for meeting elsewhere in the state.

History. Acts 1969, No. 535, § 8; A.S.A. 1947, § 71-2408; Acts 1999, No. 993, § 7.

17-31-204. Powers.

(a) The Arkansas State Board of Registration for Foresters shall have the power to make, adopt, alter, amend, and promulgate all bylaws and rules consistent with the Constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

(b) The board shall adopt and have an official seal.

(c) Each member of the board shall have power to administer oaths. The board shall have power to subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter. Any employee of the board engaged in making any investigation shall have the power to administer oaths to and take depositions of persons pertaining to any investigation. The board may require any law enforcement officer of any state agency, the sheriffs of the various counties, or other law enforcement officers of any county or municipality to serve subpoenas and other process of the board. When county, municipal, or other local officers are required to serve subpoenas or other process of the board, they shall be paid the same fees by the board as are provided by laws for similar services under process issued by circuit courts.

(d) If any person shall refuse to testify or produce any books, papers, or documents, the board may proceed by rule, in the circuit court of the county where the person is domiciled or is engaged in business, to have the person adjudged guilty of contempt. In the event the rule is made absolute, the circuit court shall punish the person for contempt of court. The person shall be permitted to purge himself or herself of contempt by compliance with such order as the court may render.

History. Acts 1969, No. 535, § 9; A.S.A. 1947, § 71-2409.

17-31-205. Staff and employees.

The Arkansas State Board of Registration for Foresters may appoint or employ an assistant secretary, executive secretary, treasurer, or other officers or employees who are not members of the board or of their immediate families, to whom clerical and administrative duties may be assigned and whose compensation shall be fixed by the board.

History. Acts 1969, No. 535, § 8; A.S.A. 1947, § 71-2408.

17-31-206. Compensation of witnesses.

(a) The Arkansas State Board of Registration for Foresters, if it deems necessary or upon advice of the Attorney General, may hire counsel and investigators and pay traveling expenses thereof for the investigation and prosecution of any violator of this chapter.

(b) At its discretion, the board may pay any witness subpoenaed to appear before the board twenty-five dollars (\$25.00) per diem when actually in attendance, including time spent in traveling not to exceed one (1) day to and one (1) day from the location of the board meeting. In addition, the board may reimburse any witness for actual traveling expenses when furnished proof of such expenses, including hotel or motel expenses, when the witness resides in a county other than the one in which the board is meeting.

History. Acts 1969, No. 535, § 10;
A.S.A. 1947, § 71-2410.

17-31-207. Records and reports.

(a) The Arkansas State Board of Registration for Foresters shall keep a record of its proceedings and a register of all applications. The register shall show:

- (1) The name, age, and residence of each applicant;
- (2) The date of the application;
- (3) The place of business of such an applicant;
- (4) His or her education and other qualifications;
- (5) Whether or not an examination was required;
- (6) Whether the applicant was rejected;
- (7) Whether a certificate of registration was granted;
- (8) The date of action of the board; and
- (9) Such other information as may be deemed necessary by the board.

(b) A roster showing the names and places of business of all foresters registered under this chapter shall be published by the Secretary of the Arkansas State Board of Registration for Foresters during the month of April each year. Copies of this roster shall be mailed to each person so registered, placed on file with the Secretary of State, and furnished to the public on request.

(c) The records of the board shall be prima facie evidence of the proceedings of the board.

(d) A transcript of the records of the board, certified by the secretary under seal, shall be admissible in evidence with the same force and effect as if the originals were produced.

(e) The board shall submit to the Governor an annual report of its transactions of the preceding year by April 1 and shall also transmit to the Governor a duly certified audit and financial statement prepared by a certified public accountant showing receipts and expenditures of the board.

History. Acts 1969, No. 535, §§ 11, 12;
A.S.A. 1947, §§ 71-2411, 71-2412.

17-31-208. Disposition of funds.

(a)(1) The Secretary of the Arkansas State Board of Registration for Foresters shall receive, disburse, and account for all income paid to or received by the Arkansas State Board of Registration for Foresters.

(2) The secretary shall institute a system of books and financial records satisfactory to the Director of the Department of Finance and Administration.

(3)(A) The secretary shall open an account in a bank in this state designated by the board as its official depository.

(B) The secretary and one (1) other officer of the board shall both sign all checks disbursing funds of the board.

(C) The secretary shall deposit all funds of the board which he or she receives into the bank designated as the official depository within forty-eight (48) hours, excluding holidays and Sundays, after he or she receives the funds.

(b) All fines collected for the violation of any provisions of this chapter shall be paid over to the board to be used by it in the same manner as funds received for the issuance of licenses.

(c) Under no circumstances shall the total amount of warrants issued by the board in payment of the expenses and compensation provided for in this chapter exceed the amount of the application, registration, and other fees collected as herein provided.

(d) Any surplus funds at the end of the fiscal year may be retained by the board for future expenditures, and the board shall not be required to pay any surplus into the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 1969, No. 535, §§ 10, 22;
A.S.A. 1947, §§ 71-2410, 71-2422; Acts
1997, No. 296, § 2.

SUBCHAPTER 3 — CERTIFICATE OF REGISTRATION

SECTION.

- 17-31-301. Requirement — Exemptions.
- 17-31-302. Qualifications.
- 17-31-303. Application for registration.
- 17-31-304. Examinations.
- 17-31-305. Issuance — Form — Evidence.
- 17-31-306. Seal — Unlawful use.

SECTION.

- 17-31-307. Expiration and renewal.
- 17-31-308. Reciprocity.
- 17-31-309. Revocation — Grounds — Proceedings.
- 17-31-310. Reissuance.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1971, No. 122, § 6: Feb. 19, 1971. Emergency clause pro-

vided: "It is hereby found and determined by the General Assembly that there is presently a need for revision of the law relating to the registration of foresters in order to provide for one member of the

board to be selected from an agency of the U. S. Government and also to revise the annual fee for renewing foresters' certificates of registration and that the provisions of this act should be given effect immediately to accomplish the above

stated changes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-31-301. Requirement — Exemptions.

(a) Any person using in connection with the person's name or otherwise assuming, using, or advertising any title or description tending to convey the impression that the person is a forester engaged in the practice of forestry on private lands shall be registered as provided in this subchapter.

(b) All foresters are eligible to apply for registration. However, nothing in this chapter shall be construed as requiring:

(1) Any person, employee of a firm, partnership, corporation, or department or agency of any branch of the government to be registered pursuant to this chapter in order to practice forestry on the person's or its own lands or manage the person's or its own timberlands, woodlands, or forests or to supervise the removal of any products therefrom; or

(2) Any person to be registered pursuant to this chapter in order to perform duties as an employee of a registered forester acting under the supervision of the registered forester.

(c) Certificates of registration shall be issued only to individuals. No firm, company, partnership, or corporation may be registered under this chapter.

History. Acts 1969, No. 535, §§ 2, 18; A.S.A. 1947, §§ 71-2402, 71-2418; Acts 1999, No. 993, § 8.

17-31-302. Qualifications.

Effective January 1, 2001, the following shall be considered as minimum evidence satisfactory to the Arkansas State Board of Registration for Foresters that an applicant is qualified to be registered as a forester:

(1) A bachelor's or advanced degree in forestry from a college or university program accredited by the Society of American Foresters. The written examination on basic forestry subjects administered by the board shall be passed with a score of at least seventy percent (70%);

(2) A bachelor's or advanced degree in forestry from a college or university program not accredited by the Society of American Foresters and, subject to graduation, three (3) years or more experience in forestry work of a nature satisfactory to the board. The written examination on basic forestry subjects administered by the board shall be passed with a score of at least seventy percent (70%);

(3) A bachelor's degree in a natural resources-related field from a college or university program, including, but not limited to, wildlife management, with at least twenty (20) semester hours of forestry courses approved by the board and, subsequent to graduation, three (3) years' or more experience in forestry work of a nature satisfactory to the board. The written examination on basic forestry subjects administered by the board shall be passed with a score of at least seventy percent (70%);

(4) A bachelor's degree not related to natural resources from a college or university program and, subsequent to graduation, six (6) years' or more experience in forestry work of a nature satisfactory to the board. The written examination on basic forestry subjects administered by the board shall be passed with a score of at least seventy percent (70%); and

(5) A two-year associate's degree in forestry from a community college or junior college and, subsequent to graduation, six (6) years' or more experience in forestry work of a nature satisfactory to the board. The written examination on basic forestry subjects administered by the board shall be passed with a score of at least seventy percent (70%).

History. Acts 1969, No. 535, § 13; 1973, No. 245, § 1; A.S.A. 1947, § 71-2413; Acts 1999, No. 993, § 9.

17-31-303. Application for registration.

(a) Application for registration shall:

(1) Be on forms prescribed and furnished by the Arkansas State Board of Registration for Foresters;

(2) Contain statements under oath giving a detailed summary of the applicant's education and technical experience; and

(3) Contain the names and addresses of not fewer than five (5) references, of whom three (3) or more shall be foresters who have personal or professional knowledge of the applicant's forestry experience or his or her character and ability. Not more than one (1) such reference may come from persons employed by the same firm or individual as that of the applicant, and not more than one (1) reference may come from personnel of the school or college attended by the applicant.

(b) The amount of the application fee and the registration fee shall be set annually by the board.

(c) No person shall be eligible for registration as a forester who is not of good character and reputation.

History. Acts 1969, No. 535, § 14; 1971, No. 122, § 2; A.S.A. 1947, § 71-2414; Acts 1999, No. 993, § 10.

17-31-304. Examinations.

(a) When written examinations are required, they shall be held at such times and places as the Arkansas State Board of Registration for Foresters shall determine.

(b) The scope of the examinations and the methods of procedure shall be prescribed by the board.

(c) A candidate who fails an examination may apply for another examination at the expiration of six (6) months from the date of failure of the prior examination.

(d) Subsequent examinations will be granted only upon payment of the prescribed fee.

History. Acts 1969, No. 535, § 15;
A.S.A. 1947, § 71-2415.

17-31-305. Issuance — Form — Evidence.

(a) The Arkansas State Board of Registration for Foresters shall issue a certificate of registration upon payment of a registration fee as provided for in this chapter to any applicant who, in the opinion of the board, has satisfactorily met all of the requirements of this chapter.

(b) The certificate shall show the full name of the registrant, shall have a serial number, and shall be signed by the Chair of the Arkansas State Board of Registration for Foresters and the Secretary of the Arkansas State Board of Registration for Foresters of the board under the seal of the board.

(c) The issuance of a certificate of registration by the board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered forester while the certificate remains unrevoked or unexpired.

History. Acts 1969, No. 535, § 16;
A.S.A. 1947, § 71-2416.

17-31-306. Seal — Unlawful use.

(a) Each registrant may obtain a seal of a design authorized by the Arkansas State Board of Registration for Foresters, bearing the registrant's name, serial number, and the legend "Registered Forester, Arkansas". All registrants engaged in the practice of forestry, either in a private professional practice or as an employee of an agency of the government or of a corporation, company, partnership, individual, or other private employer, shall endorse with his or her name and impress with his or her seal all plans, specifications, maps, reports, or documents which he or she prepares or which shall be prepared under his or her supervision.

(b) Anyone who endorses his or her name or impresses his or her seal upon any document, after the certificate of registration of the registrant named thereon has expired or has been revoked, shall be charged with

a misdemeanor unless his or her certificate has been renewed or reissued.

History. Acts 1969, No. 535, § 16;
A.S.A. 1947, § 71-2416.

17-31-307. Expiration and renewal.

(a) Certificates of registration shall expire on December 31 of the year for which issued or renewed and shall become invalid thereafter unless renewed.

(b) The Secretary of the Arkansas State Board of Registration for Foresters shall notify by letter to the last known address every person registered under this chapter of the date of the expiration of the certificate and the amount of the fee required for its renewal of one (1) year. Notice shall be mailed at least one (1) month in advance of the date of the expiration of such a certificate.

(c)(1) The board shall require persons who are licensed under this subchapter to complete not fewer than six (6) hours of continuing forestry education during the previous year beginning January 1, 2001, as a condition of license renewal. Continuing forestry education shall be equivalent to the Society of American Foresters Category I for continuing forestry education which includes, but is not limited to, seminars, short courses, and workshops in forestry or a related subject matter as approved by the board.

(2) Credit accrues at a rate of one (1) hour for each hour of actual contact. Three (3) hours of tours or field sessions equal one (1) contact hour.

(3) The board may approve continuing forestry education courses offered by professional organizations, institutions of higher learning, qualified individuals, or specialty societies. The board may approve credit hours for meetings, presentations, or other activities considered by the board to be a form of continuing forestry education.

(4) A successful applicant for licensure under this subchapter shall have two (2) years from the date the license is issued to complete the first six (6) hours of continuing forestry education. After two (2) years, the registered forester shall complete the continuing forestry education requirements as required by this subsection.

(d) The board may waive the continuing forestry education requirements in cases of hardship, illness, or retirement from active forestry practice.

(e) The board may promulgate rules and regulations to ensure compliance with the requirements of this section.

(f) Renewal of a certificate of registration shall be for an annual fee set annually by the board.

(g) The failure on the part of any registrant to renew the certificate annually in the month of December as required in this section shall not deprive the person of the right of renewal, but the fee to be paid for the renewal of a certificate after December 31 shall be increased ten percent

(10%) for each month or fraction of a month that payment of renewal is delayed. However, the maximum fee for delayed renewal shall not exceed two (2) times the annual renewal fee.

History. Acts 1969, No. 535, § 17; 1971, No. 122, § 3; A.S.A. 1947, § 71-2417; Acts 1999, No. 993, § 11.

17-31-308. Reciprocity.

Upon application therefor and the payment of a fee set by the Arkansas State Board of Registration for Foresters, the board may issue a certificate of registration as a registered forester in Arkansas to any qualified person of any state of the United States or its possessions, or Canada, provided that:

(1) The person is a legally registered forester or the equivalent in the person's own state or province and has submitted evidence satisfactory to the board that the person is so registered and that the requirements therein are substantially equivalent to the requirements of registration under this chapter; and

(2) The state in which the person is so registered will accept the certificates of registration issued by the board on a reciprocal basis.

History. Acts 1969, No. 535, § 19; A.S.A. 1947, § 71-2419; Acts 1999, No. 993, § 12.

17-31-309. Revocation — Grounds — Proceedings.

(a) The Arkansas State Board of Registration for Foresters may receive and investigate complaints against registered foresters and make findings thereon.

(b) The board may revoke the certificate of any registered forester who has been convicted of a felony or who is found guilty by the board of any fraud, deceit, gross negligence, misrepresentation, willful violation of contract, misconduct, or gross incompetence. The board shall investigate such charges.

(c) All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three (3) months after the date on which they are presented to the board.

(d) Before the board shall revoke the certificate of any registered forester, the board shall conduct a hearing, the time and place for which shall be fixed by the board. A copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed by registered letter to the last known address of the registered forester at least thirty (30) days before the date fixed for the hearing.

(e) At any hearing, the accused registered forester shall have the right to appear personally and, by counsel, to cross-examine witnesses appearing against him or her and to produce evidence and witnesses in his or her own defense.

(f) A written record, including the testimony of all witnesses, shall be made and filed by the Secretary of the Arkansas State Board of Registration for Foresters.

(g) If the accused registered forester is found guilty of the charges made against him or her, the board shall revoke his or her certificate of registration.

(h) A registered forester whose certificate of registration has been revoked may apply for a review of the proceedings of the board by any court of competent jurisdiction within sixty (60) days following the action of the board. The petition to the circuit court shall set out in detail what adverse action of the board was erroneous. After citation of the board as provided by law and full hearing, the court shall make such decree sustaining or reversing the action of the board as may seem just and proper.

History. Acts 1969, No. 535, § 20;
A.S.A. 1947, § 71-2420.

17-31-310. Reissuance.

(a) A new certificate of registration to replace any revoked, lost, destroyed, or mutilated certificate may be issued, subject to the rules of the Arkansas State Board of Registration for Foresters, and for a charge fixed by the board.

(b) The board may also reissue a certificate of registration to any person whose certificate has been revoked if:

(1) Four (4) or more members of the board vote in favor of reissuance; and

(2) The person presents satisfactory assurances that the grounds which caused the certificate to be revoked will not occur again and that the person is otherwise qualified to be registered hereunder.

History. Acts 1969, No. 535, § 21;
A.S.A. 1947, § 71-2421.

CHAPTER 32

GEOLOGISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS.
3. REGISTRATION.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-45-101 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-32-101. Title.

17-32-102. Definitions.

17-32-103. Penalty.

17-32-104. Legal and other assistance.

SECTION.

17-32-105. Contracts with registered geologist only.

17-32-106. Injunction — Liability of board.

17-32-101. Title.

This chapter shall be known and may be cited as the “Registration of Geologists Act of 1987”.

History. Acts 1987, No. 470, § 1; 1987, No. 701, § 1.

17-32-102. Definitions.

As used in this chapter:

(1) “Board” means the State Board of Registration for Professional Geologists;

(2) “Geologist” means a person engaged in the practice of geology;

(3) “Geologist-in-training” means a person who meets all requirements for registration except length of experience and who has applied for and has been approved by the board for registration. Upon completion of his or her required length of experience and after review by the board, he or she may be granted the title of registered geologist;

(4) “Geology” means that science which treats of the earth in general, investigation of the earth’s crust and the rocks and other materials which compose it, and the applied science of utilizing knowledge of the earth and its constituent rocks, minerals, liquids, gases, and other materials for the benefit of mankind;

(5)(A) “Public practice of geology” means any professional service, work, or activity requiring formal geological education, training, and experience and the understanding and application of special knowledge of the mathematical, physical, and geological sciences as may be related to those services.

(B) A person shall be construed to publicly practice geology or offer to publicly practice geology if that person:

(i) Practices any branch of the profession of geology;

(ii) By verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a geologist or, through the use of some other title, implies that he or she is a geologist;

(iii) Represents that he or she is registered under this chapter; or

(iv) Holds himself or herself out as able to perform or does perform any geological services or work recognized as geology.

(C) The board shall have authority to expand by rule the definition of public practice of geology, as provided in § 17-32-204;

(6) “Qualified geologist” means a person who is not registered under this chapter but who possesses all the qualifications specified in this chapter for registration;

(7) “Registered certified specialty geologist” means a person who is certified as a specialty geologist under this chapter;

(8) “Registered geologist” means a person who is registered as a geologist under this chapter;

(9) “Responsible charge of work” means the independent control and direction of geological work or the supervision of that work by the use of initiative, skill, and independent judgment; and

(10) “Subordinate” means any person who assists a registered geologist or a registered engineer in the practice of geology without assuming the responsible charge of work.

History. Acts 1987, No. 470, § 2; 1987, No. 701, § 2; 2005, No. 676, § 1.

17-32-103. Penalty.

(a) Any person who violates this chapter or who does any of the following shall be guilty of a Class B misdemeanor:

(1) Publicly practices or offers to publicly practice geology for others in this state without being registered in accordance with this chapter;

(2) Presents or attempts to use as his or her own the certificate of registration or the seal of another;

(3) Gives any false or forged evidence of any kind to the State Board of Registration for Professional Geologists or to any member of the board in obtaining a certificate of registration;

(4) Falsely impersonates any other registrant of like or different name; or

(5) Attempts to use an expired or revoked certificate of registration or attempts to practice at any time during a period when the board has suspended or revoked his or her certificate of registration.

(b) Any person who violates any provision of this chapter or any rule promulgated under this chapter shall be assessed a civil penalty by the board not to exceed two thousand dollars (\$2,000).

(c) Each day of any violation of this chapter shall constitute a separate offense.

History. Acts 1987, No. 470, § 27; 1987, No. 701, § 28; 2005, No. 676, § 2; 2005, No. 1994, § 398.

A.C.R.C. Notes. Pursuant to § 1-2-207, subsection (a) of this section is set out above as amended by Acts 2005, No. 1994. Subsection (a) of this section was amended by Acts 2005, No. 676 to read as follows: “(a) Any person who violates this chapter or who does any of the following

shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) or imprisonment for a period not exceeding three (3) months, or both:

“(1) Publicly practices or offers to publicly practice geology for others in this state without being registered in accordance with this chapter;

"(2) Presents or attempts to use as his or her own the certificate of registration or the seal of another;

"(3) Gives any false or forged evidence of any kind to the State Board of Registration for Professional Geologists or to any member of the board in obtaining a certificate of registration;

"(4) Falsely impersonates any other registrant of like or different name; or

"(5) Attempts to use an expired or revoked certificate of registration or attempts to practice at any time during a period when the board has suspended or revoked his or her certificate of registration."

17-32-104. Legal and other assistance.

(a) The Attorney General or one of his or her assistants shall act as legal adviser to the State Board of Registration for Professional Geologists and render legal assistance needed to implement and enforce the provisions of this chapter and the rules and regulations of the board.

(b) The board may employ additional counsel with approval of the Attorney General and any other necessary assistance to aid in the enforcement of this chapter and the regulations of the board.

(c) The board may pay reasonable expenses incurred by the board for the administration of this chapter.

History. Acts 1987, No. 470, § 27; 1987, No. 701, § 28; 2005, No. 676, § 3.

17-32-105. Contracts with registered geologist only.

This state, its political subdivisions, and all public boards, districts, commissions, or authorities shall contract for geological services only with persons registered under this chapter or with a firm employing an Arkansas-registered geologist.

History. Acts 1987, No. 470, § 21; 1987, No. 701, 22.

17-32-106. Injunction — Liability of board.

(a)(1) Upon proper determination that any person has violated the provisions of this chapter, the State Board of Registration for Professional Geologists may seek an injunction in the proper court of the county in which the violation occurred for the purpose of restraining or prohibiting a violation of this chapter.

(2) An injunction obtained pursuant to subdivision (a)(1) of this section shall be issued without bond.

(b) The members of the board acting in good faith may not be found personally liable for a proceeding commenced pursuant to this section.

History. Acts 2005, No. 676, § 4.

SUBCHAPTER 2 — STATE BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS

SECTION.

- 17-32-201. Creation — Members — Compensation.
 17-32-202. Meeting — Notice.
 17-32-203. Officers — Temporary assistance.
 17-32-204. Powers and duties generally.
 17-32-205. Code of professional conduct.

SECTION.

- 17-32-206. Witnesses and documents — Subpoenas.
 17-32-207. Official records and registers — Publication and accounting.
 17-32-208. Secretary-treasurer, assistants — Indebtedness.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-32-201. Creation — Members — Compensation.

(a)(1) There is created the State Board of Registration for Professional Geologists.

(2) It shall be the duty of the board to administer this chapter and promulgate regulations for registration of qualified geological applicants.

(3) The board shall comprise:

(A) Five (5) members who shall be registered geologists, one (1) of whom shall be an academic geologist, one (1) a governmental geologist, one (1) a salaried company geologist, one (1) an independent or consultant geologist, and one (1) a geologist-at-large;

(B) One (1) additional member who shall be appointed from the public at large and who shall have no connection whatsoever with the practice of geology; and

(C) The Director of the Arkansas Geological Survey, or his or her designated agent, as a permanent ex officio member.

(b) The members of the board shall be appointed by the Governor and confirmed by the Senate.

(c) Each member of the board shall be a citizen of the United States and shall have been a resident of this state for the two (2) years immediately preceding his or her appointment.

(d) The members shall serve five-year terms.

(e) No person shall serve as a member of the board for more than one (1) consecutive five-year term.

(f) The Governor may remove any member of the board for misconduct, incompetency, neglect of duty, or any other sufficient cause. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the Governor.

(g) Before entering upon the discharge of their duty, the members of the board shall subscribe to and file with the Secretary of State the constitutional oath of officers, whereupon the Secretary of State shall issue to each appointee a certificate of appointment.

(h) The members of the board may receive expense reimbursement in accordance with § 25-16-901 et seq. Board members, except the Secretary-treasurer of the State Board of Registration for Professional Geologists, shall serve without compensation.

History. Acts 1987, No. 470, § 3; 1987, No. 701, § 3; 1997, No. 250, § 140.

A.C.R.C. Notes. Acts 1987, No. 470, § 3, and No. 701, § 3, provided, in part, that the initial geologist members of the board shall serve the following terms: one member for one year; one member for two years; one member for three years; one

member for four years; and one member for five years, from the date of their respective appointments; and the initial public member shall serve a five-year term. Acts 1987, No. 470, § 3, and No. 701, § 3, also provided, in part, that the initial geologist members shall not be required to be registered until May 1, 1989.

17-32-202. Meeting — Notice.

(a) The State Board of Registration for Professional Geologists shall hold a meeting within thirty (30) days after appointment and thereafter shall hold at least two (2) regular meetings each year.

(b)(1) An affirmative vote of a majority of a quorum present shall be necessary to transact business.

(2) The Chair of the State Board of Registration for Professional Geologists shall not vote unless there is a tie vote among the board members, in which case his or her vote will be allowed for a majority.

(c) Regulations adopted by the board may provide for such additional regular meetings as necessary and for special meetings.

(d) Notice of all meetings shall be given as may be provided in the regulations.

History. Acts 1987, No. 470, § 4; 1987, No. 701, § 4.

17-32-203. Officers — Temporary assistance.

(a) The State Board of Registration for Professional Geologists shall elect a chair, vice chair, and secretary-treasurer from among its members. Elections shall be held annually and on a basis in which the officers will serve for a period of one (1) year. Chairmanship shall be rotated annually among the members.

(b) Administrative assistance, clerical work, and supplies will be provided by the Arkansas Geological Survey until such time as the board may assume those responsibilities.

History. Acts 1987, No. 470, § 4; 1987, No. 701, § 4.

17-32-204. Powers and duties generally.

In addition to other powers and duties specified in this chapter, the State Board of Registration for Professional Geologists shall:

(1) Adopt, after notice and public hearing, modify, repeal, promulgate, and enforce regulations reasonably necessary to:

(A) Implement or effectuate its powers and duties;

(B) Regulate proceedings before the board; and

(C) Define terms in this chapter that are otherwise undefined, including, but not limited to, the professional services, works, and activities that constitute the public practice of geology as defined in § 17-32-102;

(2) Be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(3) Adopt and have an official seal; and

(4) Have such other powers and duties as are necessary to implement this chapter.

History. Acts 1987, No. 470, § 5; 1987, No. 701, § 5; 2005, No. 676, § 5.

17-32-205. Code of professional conduct.

(a)(1) The State Board of Registration for Professional Geologists shall cause to have prepared and shall adopt a code of professional conduct which shall be made known in writing to every registrant and applicant for registration under this chapter and which shall be published in the roster provided for in this chapter.

(2) This publication shall constitute due notice to all registrants.

(b)(1) The board may revise and amend this code of ethics from time to time.

(2) The board shall immediately notify each registrant in writing of any revisions or amendments.

History. Acts 1987, No. 470, § 9; 1987, No. 701, § 9.

17-32-206. Witnesses and documents — Subpoenas.

(a) In carrying into effect this chapter, the State Board of Registration for Professional Geologists or its hearing examiner may compel the attendance of witnesses and the production of such books, records, and papers as may be required. For this purpose, the board or the hearing examiner, at the request of any party or on its own initiative, may issue

a subpoena for any witness or a subpoena to compel the production of any books, records, or papers.

(b) Subpoenas shall be issued and enforced in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1987, No. 470, § 22; 1987, No. 701, § 23.

17-32-207. Official records and registers — Publication and accounting.

(a)(1) The State Board of Registration for Professional Geologists shall keep a public record of its proceedings and a register of all applications for registration.

(2) The register shall show:

- (A) The name, age, and residence of each applicant;
- (B) The date of application;
- (C) The place of business of the applicant;
- (D) The applicant's education and other qualifications;
- (E) Whether or not an examination was required;
- (F) Whether the applicant was registered;
- (G) Whether a certificate of registration was granted;
- (H) The dates of the action by the board; and
- (I) Such other information as may be deemed necessary by the board.

(b) All official records of the board, or affidavits by the Secretary-treasurer of the State Board of Registration for Professional Geologists as to the content of such records, shall be prima facie evidence of all matters required to be kept therein.

(c)(1) A complete roster showing the names, the classification, which will be geologist, specialty, or geologist-in-training, and the last known address of the registered geologists or certified geologists-in-training shall be published by the secretary-treasurer one (1) time each year or at such intervals as established by board regulations.

(2) Copies of the roster shall be placed on file with the Secretary of State and county officials.

(3) Copies may be sent to cities requesting the information and may be distributed or sold to the public.

(d) At the end of the fiscal year, the board shall submit to the Governor and the General Assembly a complete statement of the receipts and expenditures of the board.

(e) The board records shall be subject to audit by the Division of Legislative Audit.

History. Acts 1987, No. 470, § 8; 1987, No. 701, § 8; 2005, No. 676, § 6.

17-32-208. Secretary-treasurer, assistants — Indebtedness.

(a)(1) The Secretary-treasurer of the State Board of Registration for Professional Geologists shall receive and account for all moneys received in accordance with state law and the regulations of the State Board of Registration for Professional Geologists.

(2) These moneys shall be deposited into a financial institution located in this state and shall be disbursed only by the secretary-treasurer.

(b) The secretary-treasurer shall receive such salary as the board determines within the limits set forth by the General Assembly.

(c) The board shall employ assistants required to properly perform its work and shall make expenditures from this account for any purpose that, in the opinion of the board, is reasonably necessary to perform its duties under law and its rules and regulations.

(d) The board shall have no authority to incur indebtedness.

History. Acts 1987, No. 470, § 6; 1987, No. 701, § 6.

SUBCHAPTER 3 — REGISTRATION**SECTION.**

- 17-32-301. Unlawful actions.
- 17-32-302. Persons subject to provisions — Exemptions.
- 17-32-303. Application — Recommendations.
- 17-32-304. Minimum qualifications — Ability of applicant — Geologist-in-training certificate.
- 17-32-305. Examinations.
- 17-32-306. Registration without examination.
- 17-32-307. Fees — Renewal — Date of filing.

SECTION.

- 17-32-308. Issuance of certificates of registration.
- 17-32-309. Certification in specialty.
- 17-32-310. Seal authorized — Authentication of documents.
- 17-32-311. Denial, etc., of registration certificate — Grounds — Procedure.
- 17-32-312. Disciplinary action — Procedures.
- 17-32-313. Reissuance of registration.
- 17-32-314. Filing and service.

17-32-301. Unlawful actions.

(a) It shall be unlawful for any person to publicly practice or offer to publicly practice geology in this state or to use in connection with his or her name, or otherwise assume, or advertise, any title or description tending to convey the impression that he or she is a registered geologist unless the person has been registered or exempted under this chapter.

(b) The right to engage in the practice of geology shall be deemed a personal right, based on the qualifications of the individual as evidenced by his or her certificate of registration, and shall not be transferable.

(c) It shall be unlawful for any person other than a registered geologist, a registered certified specialty geologist, or a subordinate under the direction of one (1) of the above to prepare any geologic plans,

reports, or documents in which the performance is related to the public welfare or safeguarding of life, health, property, or the environment.

(d) It shall be unlawful for anyone other than a geologist registered under this chapter to stamp or seal any plans, plats, reports, or other documents with the seal or stamp of a registered geologist or registered certified specialty geologist or to use in any manner the title "registered geologist" or the title "registered certified specialty geologist" unless registered and certified under this chapter.

(e) It shall be unlawful for any person to affix his or her signature or to stamp or seal any plans, plats, reports, or other documents after the certification of the registrant named thereon has expired or has been suspended or revoked unless the certificate has been renewed or reissued.

History. Acts 1987, No. 470, §§ 10, 26;
1987, No. 701, §§ 10, 27.

17-32-302. Persons subject to provisions — Exemptions.

(a) Except as specifically exempted by this section, every person who shall publicly practice or offer to publicly practice geology in this state is subject to this chapter. The following persons are exempt:

(1) Persons engaged solely in teaching the science of geology or engaged in nonpublic geologic research in this state;

(2) Officers and employees of the United States or this state practicing solely as such officers or employees; and

(3) A subordinate to a geologist registered under this chapter, insofar as he or she acts solely in that capacity. This exemption, however, does not permit any subordinate to practice geology for others in his or her own right or to use the title of registered geologist.

(b)(1)(A) This chapter does not prohibit one (1) or more geologists from practicing through the medium of a sole proprietorship, partnership, or corporation.

(B) In a partnership or corporation whose primary activity consists of geological services, at least one (1) partner or officer shall be a registered geologist.

(2) This chapter does not prevent or prohibit an individual, firm, company, association, or corporation whose principal business is other than the public practice of geology from employing a nonregistered geologist to perform nonpublic geological services necessary to the conduct of its business.

(3) This chapter shall not be construed to prevent or to affect the following:

(A) The practice of any profession or trade for which a license is required under any other law of this state;

(B)(i) The practice of geology or the offer to practice geology by a person not a resident of and having no established place of business in this state if the person is licensed or registered to practice the profession in another state where the requirements for a certificate of

registration or license are not lower than those specified in this state for obtaining the registration required for the work.

(ii) The person shall apply in writing to the State Board of Registration for Professional Geologists and, after payment of a fee established by rule not to exceed six hundred dollars (\$600), may be granted a written permit for a prescribed period of time of less than one (1) year to perform a specific practice of geology.

(iii) No right to perform other practices of geology shall accrue to a person granted a written permit under this section;

(C) The practice by a person not a resident of and having no established place of business in this state or who has recently become a resident of this state practicing or offering to practice the profession of geology for more than ninety (90) days in any calendar year if the person has filed with the board an application for a certificate of registration and has paid the fee required by § 17-32-307. The practice shall continue only for such time as the board requires for the consideration of the applicant for registration; or

(D) The practice of registered professional engineers from lawfully practicing soil mechanics, foundation engineering, geotechnical engineering, hydrology as it pertains to the practice of engineering, and environmental engineering.

History. Acts 1987, No. 470, §§ 24, 25; 1987, No. 701, §§ 25, 26; 1991, No. 813, § 1; 2005, No. 676, § 7.

17-32-303. Application — Recommendations.

(a)(1) An application for registration as a geologist, for a geologist-in-training certificate, or for certification in a specialty shall be made under oath and shall show the applicant's education and a detailed summary of his or her geologic work.

(2) The application shall be accompanied by the application fee prescribed by § 17-32-307.

(3) After examination of any dissertation, thesis, technical report, study, or other similar material required of any applicant for registration as a geologist or certification in a specialty, the State Board of Registration for Professional Geologists may return it to the applicant.

(b)(1) The board shall require the applicant to provide the board with the names and addresses of three (3) qualified geologists who can attest to the experience and qualifications of the applicant and the names and addresses of two (2) people who can attest to the personal character and ethical practices of the applicant.

(2) The application shall not be processed until all required information is received.

History. Acts 1987, No. 470, § 11; 1987, No. 701, § 11.

17-32-304. Minimum qualifications — Ability of applicant — Geologist-in-training certificate.

(a) To be eligible for a certificate of registration, an applicant shall meet each of the following minimum qualifications:

(1) Be of good ethical character;

(2) Have graduated from an accredited college or university with a major in either geology, engineering geology, geological engineering, or an earth science-related major that has been approved by the State Board of Registration for Professional Geologists; and

(3)(A) Have at least seven (7) years of professional geological work which shall include either:

(i) A minimum of three (3) years of professional geological work under the supervision of a registered geologist, except that prior to July 20, 1987, professional geological work shall qualify under this subdivision if it is under the supervision of a qualified geologist; or

(ii) A minimum of five (5) years of experience in responsible charge of geological work.

(B) The following criteria of education and experience qualify, as specified, toward accumulation of the required seven (7) years of professional geological work:

(i) Each year of undergraduate study in the geological sciences shall count as one-half ($\frac{1}{2}$) year of training up to a maximum of two (2) years, and each year of graduate study shall count as one (1) year of training;

(ii) Credit for undergraduate study, graduate study, and graduate courses, individually or in any combination thereof, shall in no case exceed a total of four (4) years toward meeting the requirements for at least seven (7) years of professional geological work as set forth in subdivision (a)(3)(A) of this section;

(iii) In lieu of the professional geological work as set out in this section, the board may consider the cumulative total of professional geological work or geological research of persons teaching at the college or university level if the work or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to the professional requirements of this chapter.

(b) The ability of the applicant shall have been demonstrated by:

(1) His or her having performed the work in a responsible position as determined by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by the board; and

(2) The successful passage of such examinations as are established by the board, except that in place of an examination, the board may find that the receiving of a degree in geologic science may be judged by the board as evidence of sufficient knowledge and skill to qualify for registration.

(c)(1) The board may issue a geologist-in-training certificate to any applicant who meets all qualifications, including successful passage of

the geological examination, except the required time of professional geological work.

(2) An applicant with a geologist-in-training certificate shall be awarded full registration upon presentation of:

(A) Proof that the required time of professional geologic work has been completed; and

(B) Names and addresses of three (3) qualified geologists and two (2) persons who can attest to the applicant's personal character and ethics.

History. Acts 1987, No. 470, § 12; 1987, No. 701, § 12; 1991, No. 1176, § 1; 2005, No. 676, § 8.

A.C.R.C. Notes. As enacted in 1987, subdivision (a)(2) also provided: "The board shall waive academic requirements for a person already practicing geology on

July 20, 1987, if the application for registration is made not later than May 1, 1989, and the applicant can provide evidence to satisfy the board that he is competent to publicly practice geology on a level that is expected from a registered geologist;".

CASE NOTES

ANALYSIS

Education.

Evidence.

Education.

This section requires that an applicant have majored in one of three categories or have completed a minimum number of hours towards a geology major; the two requirements are independent from one another. Arkansas Bd. of Registration for Professional Geologists v. Ackley, 64 Ark. App. 325, 984 S.W.2d 67 (1998).

Evidence.

The court would order the issuance of a certificate of registration as a professional geologist to the plaintiff since he possessed the statutory educational qualifications where he held a degree in civil engineering with a major in geologic and geotechnical engineering. Arkansas Bd. of Registration for Professional Geologists v. Ackley, 64 Ark. App. 325, 984 S.W.2d 67 (1998).

17-32-305. Examinations.

(a) Examinations shall be held at least annually.

(b) The State Board of Registration for Professional Geologists shall determine the scope, form, and content of the examinations.

History. Acts 1987, No. 470, § 13; 1987, No. 701, § 14.

A.C.R.C. Notes. Acts 1987, No. 701, § 13, provided that the State Board of Registration for Professional Geologists shall waive the examination requirement for persons who were practicing geology

on July 20, 1987, if the application for registration is received by the board not later than May 1, 1989; however, the applicant shall be required to satisfy the board that he is competent to publicly practice geology on a level that is expected from a registered geologist.

17-32-306. Registration without examination.

A person holding a certificate of registration to engage in the practice of geology on the basis of comparable licensing requirements issued to him or her by a proper authority of a state, territory, or possession of the

United States or the District of Columbia and who, in the opinion of the State Board of Registration for Professional Geologists, otherwise meets the requirements of this chapter may be registered upon application without further examination.

History. Acts 1987, No. 470, § 14;
1987, No. 701, § 15.

17-32-307. Fees — Renewal — Date of filing.

(a) The schedule of fees is as follows:

- (1) Application for registered geologist, twenty dollars (\$20.00);
- (2) Initial or comity registration, sixty dollars (\$60.00);
- (3) Geologist-in-training certificate, ten dollars (\$10.00);
- (4) Geologist-in-training certificate renewal fee, twenty dollars (\$20.00);
- (5) Geologist registration renewal fee, a maximum of sixty dollars (\$60.00) per year to be set by the State Board of Registration for Professional Geologists; and
- (6) Temporary work permit fee, a maximum of six hundred dollars (\$600) per occurrence to be set by the board.

(b) The registration shall expire on a date to be set by rule by the board.

(c) Late renewal applications submitted during a six-month penalty period following expiration must be accompanied by a fee equal to the renewal fee plus a fifty percent (50%) penalty fee.

(d)(1) Registrations not renewed prior to the end of the six-month penalty period shall not be subject to renewal.

(2) Any consideration for registration reinstatement after the six-month penalty period shall be at the discretion of the board and requires submission of a reinstatement application with the required reinstatement fee of two (2) times the renewal fee.

(e) The date of the filing fee when transmitted through the mail shall be that date shown by the post office cancellation mark appearing on the envelope containing the fee.

History. Acts 1987, No. 470, § 15;
1987, No. 701, § 16; 1991, No. 1176, § 2;
2005, No. 676, § 9.

17-32-308. Issuance of certificates of registration.

(a)(1) Upon payment of the registration fee, the State Board of Registration for Professional Geologists shall issue a certificate of registration to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter.

(2) Certificates of registration shall show the full name of the registrant, shall give a serial number, and shall be under seal of the board.

(b) The issuance of a certificate of registration by the board shall be prima facie evidence that the person named in the certificate is entitled to all the rights and privileges of a registered geologist while the certificate remains unrevoked or unexpired.

(c)(1) All applications for renewal shall be filed with the Secretary-treasurer of the State Board of Registration for Professional Geologists prior to the expiration date, accompanied by the renewal fee.

(2) A license which has expired for failure to renew may only be restored after application and payment of the prescribed restoration fee.

(d) A new certificate of registration to replace any lost, destroyed, or mutilated certificate may be issued subject to the rules of the board and payment of a fee set by the board.

History. Acts 1987, No. 470, § 16;
1987, No. 701, § 17.

17-32-309. Certification in specialty.

(a) In addition to registering as a geologist, qualified persons may also be eligible for certification in a specialty. Specialties may be designated by the State Board of Registration for Professional Geologists by regulation, with the regulations to contain any required additional qualifications. Only a registered geologist is eligible for certification in a specialty. Application may be submitted for both registration as a geologist and certification in a specialty at the same time, but the applicant must be approved for registration as a geologist before being considered for certification in a specialty. The certification in a specialty is dependent, in every case, upon the approval of registration as a geologist.

(b) An applicant for certification in a specialty shall meet all of the requirements of a registered geologist and such other requirements as the board may establish by regulation. In addition, his or her seven (7) years of professional geological work shall include one (1) of the following:

(1) A minimum of three (3) years performed under the supervision of a registered geologist who is certified in the specialty for which the applicant is seeking certification; or

(2) A minimum of five (5) years of experience in responsible charge of geological work in the specialty for which the applicant is seeking certification.

History. Acts 1987, No. 470, § 19;
1987, No. 701, § 20.

17-32-310. Seal authorized — Authentication of documents.

(a) Each registrant under this chapter, upon issuance of a certificate of registration, may purchase from a source approved by the State Board of Registration for Professional Geologists a seal of such design

as is authorized by the board, bearing the registrant's name, the name of this state, and the legend "Registered Professional Geologist" or "Certified (sub-specialty) Geologist".

(b) All drawings, reports, or other geologic papers or documents involving the practice of geology which shall have been prepared or approved by a registered geologist, or a subordinate employee under his or her direction, for the use of or for delivery to any person, or for public record within this state, shall be signed by him or her and impressed with the seal provided for in this section or with the seal of a nonresident practicing under this chapter, either of which shall indicate his or her responsibility for them.

History. Acts 1987, No. 470, § 20; 1987, No. 701, § 21.

17-32-311. Denial, etc., of registration certificate — Grounds — Procedure.

(a) The State Board of Registration for Professional Geologists shall have the power to deny, suspend, revoke, or refuse to renew the certificate of registration of any registrant who is found to have been involved in:

(1) The practice of any fraud or deceit in obtaining a certificate of registration;

(2) Any gross negligence, incompetence, or misconduct in the practice of geology as a professional geologist;

(3) Any felony;

(4) Providing false testimony or information to the board;

(5) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;

(6) Signing, affixing the professional geologist's seal, or permitting the professional geologist's seal or signature to be affixed to any specifications, reports, drawings, plans, design information, construction documents, calculations, or revisions that have not been prepared or completely checked by the professional geologist or prepared under the professional geologist's direct supervision or control;

(7) Failing to comply with this chapter or any of the rules pertaining to this chapter; or

(8) Aiding or assisting another person in violating any provision of this chapter or the rules or regulations pertaining to this chapter.

(b) Any action by the board in this regard shall be after a hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq. Any administrative or judicial review of the action shall likewise be in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1987, No. 470, § 17; 1987, No. 701, § 18; 2005, No. 676, § 10. tification, and licensing for criminal offenders, § 17-1-103.

Cross References. Registration, cer-

17-32-312. Disciplinary action — Procedures.

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, or misconduct against any registrant or nonregistrant. The charges shall be:

- (1) In writing;
- (2) Sworn to by the person or persons making them; and
- (3) Filed with the Secretary-treasurer of the State Board of Registration for Professional Geologists.

(b) Unless dismissed by the State Board of Registration for Professional Geologists as unfounded or trivial or settled informally, all charges shall be heard by the board within six (6) months after the date on which the charges were filed.

(c)(1) The time and place for the hearings shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of the hearing, shall be personally served or mailed to the last known address of the accused individual holding a certificate of authorization at least twenty (20) days before the date fixed for the hearing.

(2) At any hearing, the accused individual shall have the right to appear in person or by counsel, or both, to cross-examine witnesses, and to produce evidence and witnesses in his or her defense.

(3) If the accused individual fails or refuses to appear, the board may proceed to hear and determine the validity of the charges.

(d) If after the hearing a majority of the board votes in favor of sustaining the charges, the board may:

- (1) Reprimand the individual;
- (2) Refuse to issue, restore, or renew a registrant's certificate of registration;
- (3) Place a registrant on probation for a period of time; or
- (4) Suspend or revoke a registrant's certificate of registration subject to conditions as the board may specify.

(e) A registrant or a nonregistrant aggrieved by any action of the board in levying a fine or denying, suspending, or revoking his or her certificate of registration or refusing to issue, restore, or renew his or her certificate of registration may seek administrative or judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f)(1) In addition to or in lieu of any action under subsection (d) of this section, a civil penalty under § 17-32-103 may be assessed in a proceeding conducted under this section.

(2) Unless the amount of the penalty is paid within fifty (50) days after the order becomes final, the order shall constitute a judgment and shall be filed and an execution issued in the manner as any other judgment of a court of record.

(g) Upon petition of a registrant, the board may reissue a certificate of registration upon the approval of a majority of the members of the board in favor of the reissuance.

History. Acts 1987, No. 470, § 23; 1987, No. 701, § 24; 2005, No. 676, § 11.

17-32-313. Reissuance of registration.

By majority vote of a quorum, the State Board of Registration for Professional Geologists may reissue a certificate of registration to any person whose certificate has been revoked, upon written application to the board by the applicant showing good cause to justify reissuance.

History. Acts 1987, No. 470, § 18; 1987, No. 701, § 19.

17-32-314. Filing and service.

All appeals from a decision of the State Board of Registration for Professional Geologists, all documents or applications required by law to be filed with the board, and any notice or legal process to be served upon the board shall be filed with or served upon the Secretary-treasurer of the State Board of Registration for Professional Geologists at his or her office.

History. Acts 1987, No. 470, § 7; 1987, No. 701, § 7.

CHAPTER 33

HEATING, VENTILATION, AIR CONDITIONING, AND REFRIGERATION WORKERS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. HVACR LICENSING BOARD.
- 3. LICENSING GENERALLY.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-50-101 et seq.
Effective Dates. Acts 1991, No. 277, § 25: Feb. 28, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that the lack of a present HVACR Licensing Law allows for poorly installed or improperly serviced or maintained heating, ventila-

tion, air conditioning and refrigeration systems. The lack of a law does not allow for consumer or public health protection to the citizens of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public health and safety shall be in full force and effect from and after its passage and approval.”

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
17-33-101. Definitions.

SECTION.
17-33-102. Exemptions.

SECTION.

17-33-103. HVACR gas fitting and electrical work.

17-33-104. Local permits and licensing.

SECTION.

17-33-105. Penalties — No enforcement of liens.

17-33-106. Exemptions for licenses.

Effective Dates. Acts 1993, No. 112, § 5: Feb. 11, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that persons licensed by the LP Gas Board should be able to install LP gas appliances and the ventilation system accompanying the appliances without being licensed by the heating, ventilation, air conditioning and refrigeration licensing board; that this act

provides the same; and that until this act goes into effect such persons will needlessly be required to obtain dual licenses. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

17-33-101. Definitions.

As used in this chapter:

- (1) “Board” means the HVACR Licensing Board;
- (2) “BTUH” means British Thermal Unit per hour of heat;
- (3) “Department” means the Department of Health;
- (4) “Director” means the Director of the Department of Health;
- (5) “Heating and air conditioning” means the process of treating air to control temperature, humidity, cleanliness, ventilation, or circulation to meet human comfort requirements;
- (6) “Heating, ventilation, air conditioning, and refrigeration” or “HVACR” means the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment in heating and air conditioning, refrigeration, ventilation, or process cooling or heating systems;
- (7) “Horsepower” means the equivalent to seven hundred forty-six (746) watts;
- (8) “HVACR gas fitting work” means gas fitting work for the purpose of supplying an HVACR system and shall be limited to installing six feet (6') or less final of gas piping connection to a heating unit from an existing, accessible manual safety shutoff gas cock, installing flue gas vents and combustion air for the HVACR system;
- (9) “HVACR Licensing Fund” means a fund established under this chapter to be used exclusively to fund all activities covered under this chapter;
- (10) “HVACR maintenance work” means repair, modification, service, and all other work required for the normal continued performance of an HVACR system. This term does not include the installation or total replacement of a system or the installation of boiler or pressure vessels that must be installed by persons licensed under § 20-23-101 et seq.;

- (11) "Licensee" means the holder of a license issued pursuant to this chapter;
- (12) "One ton" means twelve thousand (12,000) BTUH;
- (13) "Persons" means any individual, firm, partnership, copartnership, corporation, association, cooperative, or any other association or combination thereof;
- (14) "Public entity" means any agency of the State of Arkansas or any political subdivision of the state;
- (15) "Refrigeration" means the use of mechanical or absorption equipment to control temperature or humidity, or both, in order to satisfy the intended use of a specific space other than for human comfort;
- (16) "Registrant" means a person who:
- (A) Does not hold a Class A, Class B, Class C, Class D, or Class E HVACR license;
 - (B) Can only perform work for an HVACR licensee; and
 - (C) Holds a current HVACR registration;
- (17) "Repair" means the reconstruction or replacement of any part of an existing HVACR system for the purpose of its maintenance;
- (18) "Subcontractor" means a person who performs a portion of the HVACR installation; and
- (19) "Ventilation" means the process of supplying or removing air by natural or mechanical means to or from any space.

History. Acts 1991, No. 277, § 1; 1999, No. 465, § 1.

17-33-102. Exemptions.

- (a) This chapter shall not apply to:
- (1) Household appliances;
 - (2) American Gas Association-approved unvented space heaters;
 - (3) Factory assembled air-cooled, self-contained refrigeration equipment of one and one-half horse power (1.5 h.p.) or less and which have no refrigerant lines extending beyond the cabinet enclosure;
 - (4) Factory assembled air-cooled, self-contained, window-type air conditioning units of thirty-six thousand (36,000) BTUH or less not connected to ducts;
 - (5) Window, attic, ceiling, and wall fans in residences; or
 - (6) Poultry operations whether engaged in hatching, primary processing, or further processing of chicken, turkey, or other fowl.
- (b) This chapter shall not apply to a person who:
- (1) Performs HVACR work in an existing building or structure owned and occupied by him or her as his or her home;
 - (2) Performs HVACR work in an existing building or structure owned or occupied by him or her on his or her farm;
 - (3) Performs work for public utilities on construction, maintenance, and development work that is incidental to his or her business;
 - (4) Performs work on motor vehicles;

(5) Is an architect or registered engineer who designs HVACR systems for design criteria only;

(6) Is an employee of a hospital and performs HVACR work that is incidental to the hospital's operation;

(7) Installs or does maintenance work on a gas-fired floor furnace, wall furnace, or unit heater, if the person is licensed pursuant to § 17-38-301 et seq. and the work is performed within the limitations of the person's license; or

(8) Is a pipefitter, welder, well driller, sheet metal worker, or plumber working under a Class A, Class B, Class D, or Class E licensee and who is enrolled in or has satisfactorily completed an apprenticeship training program approved by the State of Arkansas in his or her respective trade, and whose work is performed within the limitations of the person's license.

(c) The provisions of this chapter shall not apply to a person or public entity serving or repairing its own HVACR system by its own personnel specifically trained for such service or repair.

(d) Any person exempt under this section is required to conform to regulations on the performance of HVACR work as well as obtaining local permits and inspections as may be required by local ordinance.

History. Acts 1991, No. 277, § 6; 1997, No. 344, § 1; 1999, No. 465, § 2; 2003, No. 748, § 1.

17-33-103. HVACR gas fitting and electrical work.

(a) Any individual licensed or registered to perform HVACR work may perform HVACR gas fitting work without obtaining any other license to perform the work. HVACR gas fitting work shall be performed in accordance with the appropriate standards for gas fitting work.

(b) Any individual licensed or registered to perform HVACR work may perform electrical connections to heating and air conditioning units without obtaining any other license to perform the work, so long as the connection is made to a disconnecting means suitable in capacity for the equipment to be served and is provided by others within ten (10') feet of the unit.

(c) Nothing in this chapter shall be construed as allowing an HVACR licensee to perform electrical work without complying with any applicable local code, city code, state code, or national code pertaining to electrical work.

History. Acts 1991, No. 277, §§ 13, 21; 1995, No. 442, § 1.

17-33-104. Local permits and licensing.

Any individual who is licensed or registered under this chapter shall not be required to obtain a license from any city or county to perform

HVACR work. However, the work performed shall be subject to local permits and inspections if required.

History. Acts 1991, No. 277, § 14.

17-33-105. Penalties — No enforcement of liens.

(a)(1)(A)(i) Any person who violates any provision of this chapter or violates any rule, regulation, or order of the HVACR Licensing Board or any permit, license, or certification may be assessed a civil penalty by the board in accordance with the regulations issued by the board.

(ii) The penalty shall not exceed two hundred fifty dollars (\$250) for each violation, and each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

(B) However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation.

(2) The amount of any civil penalty levied by the board may be recovered in a civil action brought by the board in a court of competent jurisdiction without paying costs or giving bond for costs.

(b) In addition to the civil penalty provided in this section, the board is authorized to petition any court of competent jurisdiction without paying costs or giving bond for costs to:

(1) Enjoin or restrain any violation of or compel compliance with the provisions of this chapter and any rules, regulations, or orders issued thereunder;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this chapter; and

(3) Recover all costs, expenses, and damages to the board and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter.

(c) If an unlicensed person who is required to be licensed performs HVACR work in violation of this subchapter, that person shall not be entitled to a mechanic's and materialman's lien, a laborer's lien, a repairmen's lien, or any other artisan's lien for work done in violation of this subchapter.

History. Acts 1991, No. 277, § 18;
1999, No. 465, § 3; 2001, No. 1563, § 1.

17-33-106. Exemptions for licenses.

Persons licensed by the Liquefied Petroleum Gas Board pursuant to the Liquefied Petroleum Gas Board Act, § 15-75-101 et seq., are exempt from the provisions of this chapter pertaining to heating, ventilation, air conditioning, and refrigeration when:

(1) Engaged in the installation, repair, or replacement of a liquefied petroleum gas appliance so long as the appliance is not connected to a refrigeration system, except that such persons may also engage in the

replacement or repair of a liquefied petroleum gas central heating unit when it is combined with an air conditioning unit; and

(2) Engaged in the installation of a venting system required for a vented-type liquefied petroleum gas appliance.

History. Acts 1993, No. 112, § 1.

A.C.R.C. Notes. Acts 1993, No. 112, § 1, provided, in part, that: "Persons licensed by the LP Gas Board pursuant to Chapter 75 of Title 15 of the Arkansas Code are exempt from the provisions of Chapter 33 of Title 17 of the Arkansas Code pertaining to heating, ventilation, air conditioning, and refrigeration when: (a) engaged in the installation, repair or

replacement of an LP gas appliance so long as the appliance is not connected to a refrigeration system except that such person may also engage in the replacement or repair of an LP gas central heating unit when it is combined with an air conditioning unit, and (b) engaged in the installation of a venting system required for a vented-type LP appliance."

SUBCHAPTER 2 — HVACR LICENSING BOARD

SECTION.

17-33-201. Creation — Members.

17-33-202. Powers and duties.

17-33-203. Administrative procedures.

SECTION.

17-33-204. Fees.

17-33-205. Disposition.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-33-201. Creation — Members.

(a) There is hereby created the HVACR Licensing Board to be composed of nine (9) members appointed by the Governor and confirmed by the Senate. The board shall be composed of the following members who shall be residents of the State of Arkansas:

(1) The secretary of the board shall be a representative of the Department of Health;

(2) Two (2) members of the board shall be Class A license holders whose business is located in the State of Arkansas;

(3) Two (2) members of the board shall be Class B license holders whose business is located in the State of Arkansas;

(4) One (1) member of the board shall be a mechanical engineer registered in the State of Arkansas who is directly associated with HVACR design;

(5) One (1) member of the board shall be a representative of a city or county HVACR inspection program;

(6) One (1) member of the board shall be a consumer with no personal or financial interest in the HVACR industry; and

(7) One (1) member of the board shall be a member of the Mechanical Contractors Association of Arkansas who holds a current state contractor's license.

(b) A member shall serve until he or she is replaced by a successor.

(c) No member shall serve more than two (2) successive terms on the board, or until he or she ceases to be qualified as required by this chapter.

(d) The secretary of the board, who shall be an employee of the Department of Health, shall serve at the pleasure of the Governor, and all other members shall serve four-year terms.

(e) Members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1991, No. 277, § 2; 1997, No. 250, § 141.

Publisher's Notes. Acts 1991, No. 277, § 2, provided, in part, that members of the initial board appointed to positions requiring an HVACR license shall obtain the license within 90 days after appointment or they shall be ineligible to hold the position and the position will be deemed vacant and will be filled by a qualified individual.

Acts 1991, No. 277, § 2, provided, in part, that members appointed to the board shall serve staggered terms as determined by the drawing of lots with two members terms expiring each year. Acts 1991, No. 277, § 2 also provided that persons appointed to the Air Conditioning and Heating Board under Acts 1987, No. 704, may be appointed under this act.

CASE NOTES

Cited: Brown v. Arkansas State Heating, Ventilation, Air Conditioning & Refrigeration Licensing Bd., 336 Ark. 34, 984 S.W.2d 402 (1999).

17-33-202. Powers and duties.

The HVACR Licensing Board may:

(1) Adopt certain rules and regulations to ensure the proper administration and enforcement of this chapter;

(2) Adopt a mechanical code and standards for the conduct of HVACR work;

(3) Assist and advise the Department of Health on all matters related to the licensing of HVACR maintenance work;

(4) Conduct hearings on all matters related to the licensing and inspection of HVACR work;

(5) Establish HVACR code inspection programs;

(6) Conduct investigations into the qualifications of applicants for licensure at the request of the department;

- (7) Review applications for examination for a Class A, Class B, Class C, Class D, Class E, and Class L license;
- (8) Establish by board regulation a minimum level of general liability insurance coverage for a license if the board determines that a specific class of license requires insurance coverage;
- (9) Assist and advise the department in other such matters as requested by the department; and
- (10) Establish fees for the proper administration of the requirements of this chapter.

History. Acts 1991, No. 277, § 3; 1999, No. 465, § 4; 2003, No. 1712, § 1.

17-33-203. Administrative procedures.

For the purpose of this chapter, all hearings conducted by the HVACR Licensing Board and all appeals taken from the decisions of the board shall be pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1991, No. 277, § 4.

17-33-204. Fees.

- (a)(1) The HVACR Licensing Board shall adopt a fee schedule by rule and regulation. The fee schedule may include, but is not limited to:
 - (A) Testing fees;
 - (B) License fees;
 - (C) Civil penalty fees;
 - (D) Registration fees;
 - (E) Inspection fees;
 - (F) Fees for code books;
 - (G) Late renewal fees; and
 - (H) Late penalty fees.
- (2) The board may provide for a reduction in the fees of a person or partnership who holds one (1) or more licenses determined by the board to be HVACR-related and for which the board determines a reduction in fees should be allowed.
- (b) Until a fee schedule is established by the board, the licensure and registration fees shall be as follows:

Class A License	\$200.00
Class B License	150.00
Class C License	100.00
Class D License	150.00
Class E License	150.00
Class L License	No Charge
Registration Fee	25.00
- (c) The fees established by the board for licensure and registration shall not exceed the amounts provided for in subsection (b) of this section.

History. Acts 1991, No. 277, § 11; 1999, No. 465, § 5.

17-33-205. Disposition.

(a)(1) All fees or payments of any type collected by the HVACR Licensing Board under this chapter shall be deposited into the State Treasury as special revenues, and the Treasurer of State shall credit those fees or payments to the “HVACR Licensing Fund” which is hereby created.

(2)(A) All funds deposited into the HVACR Licensing Fund shall be used for the maintenance, operation, and improvement of the HVACR Licensing and Inspection Program of the Department of Health.

(B) The Chief Fiscal Officer of the State is hereby authorized, from time to time, to make transfers of moneys from the Budget Stabilization Trust Fund as loans to the HVACR Licensing Fund to be used for maintenance and operation of the program. Provided, that any such moneys loaned from the Budget Stabilization Trust Fund to the HVACR Licensing Fund shall be repaid from fees derived from the program on or before the last day of the fiscal year in which the loan of the funds is made.

(3) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is hereby authorized to transfer all unexpended funds relative to the program that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

(b) Any moneys received from the sale or trade of motor vehicles and other capital equipment purchased with HVACR licensing funds shall be credited to the HVACR Licensing Fund.

History. Acts 1991, No. 277, §§ 19, 20. 1991 amendment in (a)(1) began “Beginning July 1, 1991”.
Publisher’s Notes. As enacted, the

SUBCHAPTER 3 — LICENSING GENERALLY

- SECTION.
17-33-301. License required.
17-33-302. Qualifications.
17-33-303. Classes of licenses.
17-33-304. Display of license number.
17-33-305. Grounds for denial.

- SECTION.
17-33-306. Expiration and renewal.
17-33-307. Grounds for suspension or revocation.
17-33-308. Procedure for suspension or revocation.

17-33-301. License required.

(a) It is unlawful for any person to engage in HVACR work without the appropriate license or registration provided by this chapter, unless exempted pursuant to this chapter.

(b) It is unlawful for any licensee to allow a nonlicensed person to use his or her Arkansas HVACR license number for any purpose.

History. Acts 1991, No. 277, § 5.

section began: "Beginning July 1, 1992,".

Publisher's Notes. As originally enacted by Acts 1991, No. 277, § 5, this

17-33-302. Qualifications.

(a) An applicant for an HVACR license must meet the following minimum requirements. The applicant must:

- (1) Be an individual of at least eighteen (18) years of age;
- (2) Make application to the Department of Health on forms prescribed by the HVACR Licensing Board;
- (3) Specify the class of license desired;
- (4) Meet all requirements specified by rule and regulation promulgated by the board;
- (5) Pay the appropriate examination and license fees required by the board; and
- (6) Pass the appropriate examinations specified by the board.

(b) An applicant who fails an examination is eligible for reexamination.

History. Acts 1991, No. 277, § 8; 1997, No. 344, § 2.

A.C.R.C. Notes. Acts 1991, No. 277, § 10, provided: "Upon application to the board, every individual who has engaged in the performance of HVACR work as an employer or employee for at least two (2)

years prior to July 1, 1991, shall be entitled to obtain the appropriate license upon paying the appropriate fees. The application for licensure under this provision must be made before July 1, 1992".

As enacted, subsection (a) of this section began: "Beginning July 1, 1992."

17-33-303. Classes of licenses.

(a) Except as otherwise provided in this chapter, every individual who designs, installs, constructs, maintains, services, repairs, alters, or modifies any HVACR system or any portion of an HVACR system in the State of Arkansas shall obtain one (1) of the following classes of licenses and pay the fees prescribed by the HVACR Licensing Board:

(1) Class A — Entitles the licensee to perform HVACR work without limitation to BTUH or horsepower capacities;

(2) Class B — Entitles the licensee to perform HVACR work on air conditioning systems that develop a total of not more than fifteen (15) tons of cooling capacity per unit or one million (1,000,000) BTUH heating input per unit and refrigeration systems of fifteen horsepower (15 h.p.) or less per unit;

(3) Class C — Entitles the licensee who is in the business of servicing and repairing heating, ventilation, air conditioning, or refrigeration equipment for the public to service, repair, or replace components of HVACR equipment and to perform HVACR work on air conditioning systems that develop a total of not more than fifteen (15) tons of cooling capacity per unit or one million (1,000,000) BTUH heating input per unit and refrigeration systems of fifteen horsepower (15 h.p.) or less per unit. A Class C license holder shall not install any original HVACR equipment or replace any existing HVACR equipment;

(4) Class D — Entitles the licensee to perform sheet metal work as it relates to ductwork for HVACR systems without regard to or limitation of horsepower of the system to which the duct connects. The licensee in this category is prohibited from the sale, installation, and service of HVACR equipment and systems;

(5) Class E — Entitles the licensee to perform refrigeration work as defined in § 17-33-101 without regard to or limitation of horsepower. The licensee in this category is prohibited from the sale, installation, and service of heating and air conditioning equipment used for the treatment of air for human comfort requirements; and

(6) Class L — Entitles a licensee to apply for and obtain a restricted lifetime license without having to pay a license fee in any specific category of license as defined in this chapter. The applicant must be at least sixty-five (65) years of age and hold a current license in good standing with the board. The board shall promulgate rules and regulations to define the specific requirements of the lifetime license.

(b) The board shall promulgate rules and regulations necessary to carry out the provisions of this section.

(c)(1) An individual may perform HVACR work under a Class A, Class B, Class C, Class D, or Class E HVACR license holder by registering with the Department of Health.

(2) The registrant shall pay an annual registration fee as required by the board.

(3) All licensees are responsible for ensuring that all HVACR employees hold a current HVACR registration or HVACR license.

History. Acts 1991, No. 277, § 7; 1999, No. 465, § 6.

A.C.R.C. Notes. Acts 1999, No. 465, § 6, provided in part: “(c) Upon application to the board, every individual who has engaged in the performance of sheet-metal work as it relates to HVACR ductwork or refrigeration work as defined in

§ 17-33-101 as an employer or employee for at least two (2) years prior to July 1, 1999, shall be entitled to obtain a Class D or Class E license upon paying the appropriate fees. The application for licensure under this provision must be made before July 1, 2000.”

17-33-304. Display of license number.

Every individual licensed under this chapter shall display his or her HVACR license number on all his or her business vehicles and in all forms of advertising in a manner prescribed by the rules and regulations promulgated by the HVACR Licensing Board.

History. Acts 1991, No. 277, § 15.

17-33-305. Grounds for denial.

All applicants who meet the requirements for licensure or registration shall be issued the appropriate license or registration, except that the HVACR Licensing Board may deny a license if the applicant has:

(1) Committed any act which if committed by a licensee or registrant would be grounds for suspension or revocation of the license or registration;

(2) Previously been denied a license or registration under this chapter for cause or previously had a license or registration revoked for cause; or

(3) Knowingly made any false statement or misrepresentation on the application.

History. Acts 1991, No. 277, § 9.

17-33-306. Expiration and renewal.

All licenses or registrations issued under this chapter shall expire one (1) year after the date of issuance or at a time specified by the HVACR Licensing Board. To renew a license or registration, the licensee must submit to the Department of Health before the expiration date on a form prescribed by the department the appropriate license or registration fees required by this chapter.

History. Acts 1991, No. 277, § 12.

17-33-307. Grounds for suspension or revocation.

The HVACR Licensing Board, on its own motion, may make investigations and conduct hearings and, on its own motion or upon complaint in writing signed and verified by the complainant, suspend or revoke any license or registration if it finds that the holder of the license or registrant has:

(1) Made a material misstatement in the application for license or registration or renewal thereof;

(2) Demonstrated incompetency to act as a license holder or registrant according to rules and standards promulgated by the board; or

(3) Violated any provisions of this chapter or any rule, regulation, or order prescribed by the board.

History. Acts 1991, No. 277, § 16.

17-33-308. Procedure for suspension or revocation.

(a) A license may be suspended or revoked pursuant to the procedures of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) An appeal may be had from the hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) Any member of the HVACR Licensing Board or a representative designated by the board shall have the authority to administer oaths for the taking of testimony.

(d) One (1) year after the date of the revocation, an application may be made for a new license or registration.

History. Acts 1991, No. 277, § 17; 1997, No. 344, § 3.

CHAPTER 34
HOMEBUILDERS

SECTION.
17-34-101 — 17-34-109. [Repealed.]

A.C.R.C. Notes. Acts 2001, No. 738, § 2, provided: “On the effective date of this act [July 1, 2001], any funds remaining in the Secretary of State’s accounts derived from the provisions of Arkansas Code 17-34-107 shall be deposited into the State Central Services Fund as ‘direct revenues’ for the Contractors Licensing Board.”

Effective Dates. Acts 2001, No. 738, § 3: July 1, 2001. Emergency clause pro-

vided: “It is found and determined by the General Assembly that this act is essential to the proper regulation of the residential construction industry and that the regulatory provisions of Act 950 of 1999 shall become effective July 1, 2001. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001.”

17-34-101 — 17-34-109. [Repealed.]

Publisher’s Notes. This chapter was repealed by Acts 2001, No. 738, § 1. Prior to the 1995 revision of Title 17, this chapter was codified as § 17-47-101 et seq. The chapter was derived from the following sources:

17-34-101. Acts 1987, No. 859, § 1.
17-34-102. Acts 1987, No. 859, § 2.
17-34-103. Acts 1987, No. 859, § 8.

17-34-104. Acts 1987, No. 859, § 3; 1993, No. 158, § 1; 1993, No. 196, § 1.
17-34-105. Acts 1987, No. 859, § 4; 1991, No. 786, § 24.
17-34-106. Acts 1987, No. 859, § 5; 1993, No. 158, § 2; 1993, No. 196, § 2.
17-34-107. Acts 1987, No. 859, § 6.
17-34-108. Acts 1987, No. 859, § 7.
17-34-109. Acts 1987, No. 859, § 9.

CHAPTER 35
INTERIOR DESIGNERS

- SUBCHAPTER.
1. INTERIOR DESIGNERS TITLE REGISTRATION.
 2. STATE BOARD OF REGISTERED INTERIOR DESIGNERS.
 3. REQUIREMENTS.
 - 4-5. [RESERVED.]
 6. ARKANSAS RESIDENTIAL INTERIOR DESIGNERS TITLE REGISTRATION ACT.
 7. STATE BOARD OF REGISTERED RESIDENTIAL INTERIOR DESIGNERS.
 8. REGISTRATION REQUIREMENTS.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-52-101 et seq.

SUBCHAPTER 1 — INTERIOR DESIGNERS TITLE REGISTRATION

SECTION.

- 17-35-101. Short title.
- 17-35-102. Purpose.
- 17-35-103. Definitions.

SECTION.

- 17-35-104. Exemptions — Use of the title.
- 17-35-105. Penalties.
- 17-35-106. [Repealed.]

17-35-101. Short title.

Sections 17-35-101 — 17-35-105, and 17-35-301 — 17-35-304 may be cited as the “Arkansas Interior Designers Title Registration Act”.

History. Acts 1993, No. 847, § 1; 2009, substituted “17-35-105” for “17-35-106, No. 1367, § 11.

Amendments. The 2009 amendment

17-35-102. Purpose.

The purpose of this subchapter and §§ 17-35-301 — 17-35-304 is to register and regulate persons known as registered interior designers, in the public interest, and to prohibit the use of the title of “registered interior designer” by persons who are not registered.

History. Acts 1993, No. 847, § 2; 2009, substituted “this subchapter” for “17-35-106, No. 1367, § 11.

Amendments. The 2009 amendment

17-35-103. Definitions.

(a) As used in § 17-15-201 et seq., this subchapter, and §§ 17-35-301 — 17-35-304, “registered interior designer” means a person registered under § 17-15-201 et seq., this subchapter, and §§ 17-35-301 — 17-35-304.

(b)(1) A registered interior designer is a design professional who is qualified by education, experience, and examination as authorized by an authority.

(2) In general, a registered interior designer performs services including preparation of working drawings and documents relative to non-load-bearing interior construction, materials, finishes, space planning, furnishings, fixtures, and equipment.

(c) Except as provided herein, interior design services do not include services that constitute the practice of architecture as defined in the Arkansas Architectural Act, § 17-15-101 et seq., or the practice of engineering as defined in the Arkansas Engineering Act, § 17-30-101 et seq.

History. Acts 1993, No. 847, § 3; 2009, No. 1367, § 11.

Amendments. The 2009 amendment rewrote the section.

17-35-104. Exemptions — Use of the title.

(a) Section 17-15-201 et seq., this subchapter, and §§ 17-35-301 — 17-35-304 do not apply to persons holding themselves out as “interior decorators” or offering “interior decorating services”, such as selection or assistance in selecting surface materials, window treatments, wall coverings, paint, floor coverings, surface-mounted lighting, or loose furnishings not subject to regulation under applicable building codes.

(b) This subchapter and §§ 17-35-301 — 17-35-304 do not apply to architects licensed by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers provided that such architects do not refer to themselves as “registered interior designers” unless registered by this subchapter and §§ 17-35-301 — 17-35-304.

(c) Nothing contained in § 17-15-201 et seq., this subchapter, and §§ 17-35-301 — 17-35-304 shall prevent any person from rendering interior design services, provided such a person does not use the title of “registered interior designer” unless registered under § 17-15-201 et seq., this subchapter, and §§ 17-35-301 — 17-35-304.

History. Acts 1993, No. 847, § 13; 2009, No. 1367, § 11.

Amendments. The 2009 amendment rewrote the section.

17-35-105. Penalties.

It shall be a Class A misdemeanor for a person to:

(1) Use the title of “registered interior designer”, unless registered under § 17-15-201 et seq., this subchapter, and §§ 17-35-301 — 17-35-304;

(2) Present as his or her own the registration of another;

(3) Give false or forged evidence to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers or any member thereof in obtaining a registration;

(4) Falsely impersonate any other practitioner of like or different name;

(5) Use or attempt to use a registration that has been revoked; or

(6) Otherwise violate any of the provisions of § 17-15-201 et seq., this subchapter, and §§ 17-35-301 — 17-35-304.

History. Acts 1993, No. 847, § 6; 2009, No. 1367, § 11.

Publisher’s Notes. As originally enacted by Acts 1993, No. 847, § 15, this section began: “Effective January 1, 1994,”.

Amendments. The 2009 amendment

substituted “§ 17-15-201 et seq., this subchapter” for “17-35-201, 17-35-202, 17-35-106” in (1) and (6); and substituted “Arkansas State Board of Architects, Landscape Architects, and Interior Designers” for “State Board of Registered Interior Designers” in (3).

17-35-106. [Repealed.]

Publisher’s Notes. This section, concerning disposition of funds, was repealed by Acts 2009, No. 1367, § 12. The section

was derived from Acts 1993, No. 847, § 15.

SUBCHAPTER 2 — STATE BOARD OF REGISTERED INTERIOR DESIGNERS

SECTION.

17-35-201, 17-35-202. [Repealed.]

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-35-201, 17-35-202. [Repealed.]

A.C.R.C. Notes. Acts 2009, No. 1367, § 1, provided: "Renaming the Arkansas State Board of Architects.

"(a) The Arkansas State Board of Architects is renamed the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

"(b) The Arkansas Code Revision Commission shall replace all references to the 'Arkansas State Board of Architects' in the Arkansas Code with 'Arkansas State Board of Architects, Landscape Architects, and Interior Designers'."

Acts 2009, No. 1367, § 2, provided: "(a) The State Board of Registered Interior Designers, established by § 17-35-201 et seq., is abolished, and its powers and duties are transferred to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers by a type 3 transfer under § 25-2-106.

"(b) For purposes of this act, the Arkansas State Board of Architects, Landscape

Architects, and Interior Designers shall be considered a principal department established by Acts 1971, No. 38."

Acts 2009, No. 1367, § 3, provided: "(a) The Arkansas State Board of Landscape Architects, established by § 17-36-201 et seq., is abolished, and its powers and duties are transferred to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers by a type 3 transfer under § 25-2-106.

"(b) For purposes of this act, the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall be considered a principal department established by Acts 1971, No. 38."

Publisher's Notes. These sections, concerning board creation and members, powers, and duties, were repealed by Acts 2009, No. 1367, § 13. The sections were derived from the following sources:

17-35-201. Acts 1993, No. 847, §§ 4, 7; 1997, No. 250, § 142.

17-35-202. Acts 1993, No. 847, § 5.

SUBCHAPTER 3 — REQUIREMENTS

SECTION.

17-35-301. Registration of interior designers.

17-35-302. Requirements for registration.

SECTION.

17-35-303. Registration renewal.

17-35-304. Seal of interior designer.

17-35-305. Grounds for revocation.

A.C.R.C. Notes. Acts 1993, No. 847, § 10, as amended by Acts 1997, No. 920, § 1, provided: “Existing Interior Designers. Any person who applies for registration and remits the application and initial registration fees no later than December 31, 1994 shall be registered by the board without taking any further written examination, provided that:

“(a) The applicant has previously passed the examination administered by the National Council for Interior Design Qualifications or either of its predecessors, the American Institute of Interior Design (AID) and the National Society of Interior Design (NSID); or

“(b) The applicant has satisfactory evidence of having used or been identified by the title ‘interior designer’ and has a combination of interior design education and

diversified and appropriate interior design experience totaling at least two (2) years; and provides proof of passage of the 1990 or later Building and Barrier Free Codes section of the NCIDQ (National Council of Interior Design Qualification) or other codes examination adopted by the board, no later than December 31, 1998.

“(c) A person shall be deemed to have used or been identified by the title ‘interior designer’ within the meaning of this section if such person demonstrated to the satisfaction of the board that such person was, either on his own account, which means self-employed, or in the course of regular employment, rendering or offering to render to another person interior design services as defined in Section 3(b) of this act [§ 17-35-103].”

17-35-301. Registration of interior designers.

(a) It is unlawful for a person who is not registered under § 17-15-201 et. seq., § 17-35-101 et seq., and this subchapter as an interior designer to advertise as a registered interior designer or to use the title of “registered interior designer” or any other words, letters, figures, or other devices for the purpose of implying, directly or indirectly, that the person is registered under § 17-15-201 et. seq., § 17-35-101 et seq., and this subchapter.

(b) It is unlawful for a company, partnership, association, corporation, or other similar organization, after January 1, 1994, to advertise that it is in a position to provide the services of a registered interior designer unless the persons providing the services are in the responsible charge of a registered interior designer.

(c) An applicant for registration as a registered interior designer shall establish to the satisfaction of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers that the applicant:

(1) Is at least twenty-one (21) years of age;

(2) Has not been convicted of an offense that bears directly on the fitness of the applicant to be registered;

(3) Has passed or supplied proof of passage of the examination required by § 17-15-201 et. seq., § 17-35-101 et seq., and this subchapter; and

(4) Meets any other requirements established by the board.

History. Acts 1993, No. 847, § 9; 2009, No. 1367, § 14.

Publisher's Notes. As originally enacted by Acts 1993, No. 847, § 9, this section began: "It is unlawful for any person who, after January 1, 1994,".

Amendments. The 2009 amendment substituted "§ 17-15-201 et seq., § 17-35-101 et seq., and this subchapter" for "§§

17-35-101 — 17-35-106, 17-35-201, 17-35-202, and 17-35-301 — 17-35-304" twice in (a), and in (c)(3); substituted "Arkansas State Board of Architects, Landscape Architects, and Interior Designers" for "State Board of Registered Interior Designers" in the introductory language of (c); and made minor stylistic changes.

17-35-302. Requirements for registration.

(a) Each applicant for registration shall provide substantial evidence to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers that the applicant:

(1)(A) Has passed the examination prepared and administered by the National Council for Interior Design Qualification or its successor in interest.

(B) The applicant shall provide a verification from the National Council for Interior Design Qualification or its successor in interest as proof that he or she passed the examination; and

(2)(A) Is a graduate of a five-year interior design program from an accredited institution and has completed at least one (1) year of diversified and appropriate interior design experience;

(B) Is a graduate of a four-year interior design program or a master's degree program in interior design from an accredited institution and has completed at least two (2) years of diversified and appropriate interior design experience; or

(C) Is a licensed architect certified by the board.

(b) Each interior design program must be accredited by the Council for Interior Design Accreditation or its successor in interest or be an interior design program of an institution accredited by the North Central Association of Colleges and Schools, or a program determined by the board to be substantially equivalent to such accredited programs.

(c) The board may accept satisfactory evidence of registration as an interior designer in another jurisdiction if the jurisdiction's requirements for registration are equal to or greater than those required for registration in this state at the date of application.

(d) Every registration shall expire annually on a day designated by the board.

History. Acts 1993, No. 847, §§ 8, 11, 14; 2009, No. 1367, § 14.

A.C.R.C. Notes. Acts 1993, No. 847, § 8, provided, in part, that for four years

from its date of passage, an applicant may show, in lieu of one of the provisions of (a)(2), that he or she has completed at least three (3) years of an interior design

curriculum from an accredited institution and has completed three (3) years of diversified and appropriate interior design experience; or that he or she is a graduate of a two-year interior design program from an accredited institution and has completed four years of diversified and appropriate interior design experience.

Publisher’s Notes. In reference to the term “date of passage,” Acts 1993, No. 847, was signed by the Governor on April 2, 1993 and became effective on August 13, 1993.

Amendments. The 2009 amendment rewrote the section.

17-35-303. Registration renewal.

(a) Every registered interior designer shall annually renew his or her registration, submit proof of completion of continuing education units as required by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers, and pay the renewal fee established by the board.

(b) It is unlawful for an interior designer who fails to renew his or her registration to continue to use the title of “registered interior designer”.

History. Acts 1993, No. 847, § 14; 2009, No. 1367, § 14.

Board of Architects, Landscape Architects, and Interior Designers” for “State Board of Registered Interior” in (a); and made a minor stylistic change in (b).

Amendments. The 2009 amendment substituted “Designers Arkansas State

17-35-304. Seal of interior designer.

(a)(1) Each registered interior designer shall obtain a seal as prescribed by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

(2)(A) A document issued by the registered interior designer and being filed for public record shall bear the signature and seal of the interior designer who prepared or approved the document and the date on which it was sealed.

(B) The signature, date, and seal shall be evidence of the authenticity of the document.

(b) No registered interior designer shall affix, or permit to be affixed, his or her seal or signature to any plan, specification, drawing, or other document that depicts work that he or she is not competent or certified to perform.

(c) The registered interior designer’s contract documents shall contain a statement that the document is not an architectural or engineering drawing, specification, or design and is not to be used for construction of any load-bearing columns, load-bearing framing, or load-bearing walls or structures or for the issuance of any building permit, except as otherwise provided by law.

(d) Documents as defined in this section are not to be construed as those that are required to be filed in state or local building departments or municipalities, except as otherwise provided by law.

(e) No registered interior designer shall affix his or her signature or seal to any plan, specifications, or other document that was not prepared by him or her or under his or her responsible supervising control or by another interior designer and reviewed, approved, or

modified and adopted by him or her as his or her own work according to the rules adopted by the board.

(f) Studies, drawings, specifications, and other related documents prepared by a registered interior designer in providing interior design services shall be of a sufficiently high standard to clearly and accurately indicate all essential parts of the work to which they refer.

(g) The shape and design of the seal will be different from the seals of architects, engineers, or landscape architects.

(h)(1) When the registration of a registered interior designer has expired or been revoked or suspended by the board, the registered interior designer shall surrender his or her seal to the Chair of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers within thirty (30) calendar days after the revocation or suspension has become effective.

(2) The seal shall be returned upon expiration of the suspension period.

History. Acts 1993, No. 847, § 12; 2009, No. 1367, § 14.

Amendments. The 2009 amendment substituted “Arkansas State Board of Architects, Landscape Architects, and Interior Designers” for “State Board of Regis-

tered Interior Designers” in (a)(1); substituted “All documents” for “Any drawing, plan, specification, or report prepared or” in (a)(2)(A); inserted “registered” in (c); inserted “expired” in (h)(1), and made minor stylistic changes.

17-35-305. Grounds for revocation.

The Arkansas State Board of Architects, Landscape Architects, and Interior Designers may deny, suspend, or revoke the registration of a registered interior designer upon proof that:

(1) The holder of the registration is practicing in violation of § 17-15-201 et seq., this chapter, or the proper rules of the board;

(2) The registration has been obtained by fraud or misrepresentation or the person named therein has obtained it by fraud or misrepresentation;

(3) Money other than the regular fees provided for has been paid for the registration;

(4) The holder of the registration is falsely impersonating a practitioner or former practitioner of a like or different name or is practicing under an assumed or fictitious name;

(5) The holder of the registration has been guilty of a felony;

(6) The holder of the registration has been guilty of fraud or deceit or of gross negligence or misconduct in the practice of interior design;

(7) The holder of the registration affixed, or permitted to be affixed, his or her seal or name to any plans, specifications, drawings, or related documents that were not prepared by the holder or under his or her responsible supervisory control;

(8) The holder of the registration has been adjudged mentally incapable by a court of competent jurisdiction;

(9) The holder of the registration has committed gross unprofessional conduct; or

- (10) The holder of the registration has:
- (A) Had a professional license or registration suspended or revoked;
 - (B) Had imposed other disciplinary action by a regulatory body of another state for any cause other than failure to pay applicable fees; or
 - (C) Surrendered or did not renew a professional license or registration after the initiation of any investigation or proceeding by such a body.

History. Acts 2009, No. 1367, § 15.

SUBCHAPTERS 4 , 5.

[Reserved]

SUBCHAPTER 6 — ARKANSAS RESIDENTIAL INTERIOR DESIGNERS TITLE REGISTRATION ACT

SECTION.	SECTION.
17-35-601. Title.	17-35-604. Exemptions — Use of the title.
17-35-602. Purpose.	17-35-605. Penalties.
17-35-603. Definitions.	17-35-606. Funds.

17-35-601. Title.

Sections 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803 may be cited as the “Arkansas Residential Interior Designers Title Registration Act”.

History. Acts 1993, No. 959, § 1.

17-35-602. Purpose.

The purpose of §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803 is to register and regulate persons known as registered residential interior designers, in the public interest, and to prohibit the use of the title of “registered residential interior designer” by persons who are not registered.

History. Acts 1993, No. 959, § 2.

17-35-603. Definitions.

As used in §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803:

- (1) “Board” means the State Board of Registered Residential Interior Designers; and
- (2)(A) “Registered residential interior designer” means a person registered under §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803.

(B)(i) The registered residential interior designer is a design professional who is qualified by education, experience, and examination as authorized by an authority.

(ii) In general, a registered residential interior designer performs services including preparation of working drawings and documents relative to nonload-bearing interior construction, materials, finishes, space planning, furnishings, fixtures, and equipment.

(C) Except as provided herein, residential interior design services do not include services that constitute the practice of architecture as defined in the Arkansas Architectural Act, § 17-15-101 et seq., or the practice of engineering as defined in the Arkansas Engineering Act, § 17-30-101 et seq.

History. Acts 1993, No. 959, § 3.

17-35-604. Exemptions — Use of the title.

(a) Sections 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803 shall not apply to persons holding themselves out as “interior decorators” or offering “interior decorating services”, such as selection or assistance in selecting surface materials, window treatments, wall coverings, paint, floor coverings, surface-mounted lighting, or loose furnishings not subject to regulation under applicable building codes.

(b) Sections 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803 shall not apply to architects licensed by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers, provided that such architects do not refer to themselves as “registered residential interior designers” unless registered under §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803.

(c) Nothing contained in §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803 shall prevent any person from rendering residential interior design services, provided such a person does not use the title of “registered residential interior designer” unless registered under §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803.

History. Acts 1993, No. 959, § 12.

17-35-605. Penalties.

Effective January 1, 1994, it shall be a Class A misdemeanor for any person to:

(1) Use the title of “registered residential interior designer”, unless registered under §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803;

(2) Present as his or her own the registration of another;

(3) Give false or forged evidence to the State Board of Registered Residential Interior Designers or any member thereof in obtaining a registration;

(4) Falsely impersonate any other practitioner of like or different name;

(5) Use or attempt to use a registration that has been revoked; or

(6) Otherwise violate any of the provisions of §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803.

History. Acts 1993, No. 959, § 6.

17-35-606. Funds.

(a) All moneys collected by the State Board of Registered Residential Interior Designers under §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803 shall be deposited into a financial institution in this state designated by the board.

(b) No general revenues of this state shall be appropriated to the board.

History. Acts 1993, No. 959, § 14.

SUBCHAPTER 7 — STATE BOARD OF REGISTERED RESIDENTIAL INTERIOR DESIGNERS

SECTION.

17-35-701. Creation.

17-35-702. Powers and duties of the board.

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-35-701. Creation.

(a) There is created the State Board of Registered Residential Interior Designers.

(b)(1) The board shall consist of seven (7) members. Of the seven (7) members of the board:

(A) Five (5) shall be registered residential interior designers, one (1) of whom may be a professional full-time design educator, registered or unregistered;

(B) One (1) shall be an architect licensed by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers who provides design services; and

(C) One (1) shall be a consumer.

(2) Members shall be appointed for terms of five (5) years.

(3) Vacancies shall be filled by appointment by the Governor for the unexpired term.

(4) No State Board of Registered Residential Interior Designers member shall serve consecutive terms.

(c)(1) A majority of the members on the State Board of Registered Residential Interior Designers shall constitute a quorum.

(2) Decisions of the State Board of Registered Residential Interior Designers shall be made by a majority vote of a quorum.

(d) The State Board of Registered Residential Interior Designers shall hold at least two (2) regular meetings each year and such other meetings as are deemed necessary.

(e)(1) The State Board of Registered Residential Interior Designers shall elect annually from its members a chair and vice chair to hold office for one (1) year and an executive secretary who may or may not be a member of the board.

(2) The executive secretary shall hold the office at the pleasure of the board and may receive a salary determined by the board.

(f)(1) State Board of Registered Residential Interior Designers members shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) The State Board of Registered Residential Interior Designers shall fix the compensation of its employees by resolution adopted at a regular meeting of the board.

History. Acts 1993, No. 959, §§ 4, 7; 1997, No. 250, § 143.

A.C.R.C. Notes. As enacted by Acts 1993, No. 959, § 4 also provided that in lieu of registration, the initial residential interior design members of the State Board of Registered Residential Interior Designers (other than the design educator) must have been offering residential interior design services for at least six (6) years, be otherwise eligible to be registered, and become registered within one (1) year of the effective date of this act.

Acts 1993, No. 959, § 4 further provided, in part, that the State Board of Registered Residential Interior Designers

shall hold a meeting within thirty (30) days after its members are first appointed.

Acts 1993, No. 959, § 4, provided, in part, that the initial members of the State Board of Registered Residential Interior Designers shall be appointed by the Governor for such staggered terms as will result in one member's term of office expiring after one year; two member's terms of office expiring after two years; one member's term of office expiring after three years; two member's terms of office expiring after four years; and one member's term of office expiring after five years; and that the five year terms be

appointed in such a manner that the terms of not more than two (2) members expire in one (1) year.

17-35-702. Powers and duties of the board.

- (a) The State Board of Registered Residential Interior Designers:
 - (1) Shall administer, coordinate, and enforce the provisions of §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803;
 - (2) May investigate allegations of misconduct and suspend registrations concerning the provisions of §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803;
 - (3) Shall adopt regulations in the manner prescribed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to carry out the purposes and policies of §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803, including regulations relating to professional conduct, standards of performance and professional examination and registration, registration renewal requirements, application, renewal, and late fees, suspension and revocation of registrations, and the establishment of a code of ethics for persons registered under §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803;
 - (4) Shall set fees for registration, registration renewals, examinations, and all other administrative expenses;
 - (5) May require a registrant, as a condition of the renewal of his or her registration, to satisfy continuing education requirements;
 - (6) Shall maintain an official roster showing the name, address, and registration number of each interior designer registered under §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803;
 - (7) Shall require registrants to display their registration numbers on all business and advertising instruments, including business cards, stationery, and contracts;
 - (8) Shall conduct hearings and keep records and minutes necessary to carry out its functions;
 - (9) May, to the extent moneys are appropriated therefor, employ an executive secretary and other employees and fix their compensation; and
 - (10) Shall do all things reasonable and necessary to carry out the purposes of §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803.

History. Acts 1993, No. 959, § 5.

SUBCHAPTER 8 — REGISTRATION REQUIREMENTS

SECTION.	SECTION.
17-35-801. Registration of residential interior designers.	17-35-803. Registration renewal.
17-35-802. Requirements for registration.	

A.C.R.C. Notes. Acts 1993, No. 959, § 10, provided: "Any person who applies for registration and remits the application and initial registration fees no later than December 31, 1994 shall be registered by the board without taking any further written examination, provided that:

"(a) The applicant has satisfactory evidence of having used or been identified by the title 'interior designer' and has a combination of interior design education and diversified and appropriate interior design experience totaling at least two (2) years and has taken and passed the Coun-

cil for Qualification of Residential Interior Designer's (CQRID) examination.

"(b) A person shall be deemed to have used or been identified by the title 'interior designer' within the meaning of this section if such person demonstrated to the satisfaction of the board that such person was, either on his own account, which means self-employed, or in the course of regular employment, rendering or offering to render to another person interior design services as defined in Section 3(a) of this act."

17-35-801. Registration of residential interior designers.

(a) It is unlawful for any person who, after January 1, 1994, is not registered under §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803 as a residential interior designer to advertise as a registered residential interior designer, to use the title of "registered residential interior designer" or any other words, letters, figures, or other devices for the purpose of implying, directly or indirectly, that the person is registered under §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803.

(b) It is unlawful for any company, partnership, association, corporation, or other similar organization to advertise that it is in the position to provide the services of a registered residential interior designer unless the persons providing such services are in the responsible charge of a registered residential interior designer.

(c) An applicant for registration as a residential interior designer shall establish to the satisfaction of the State Board of Registered Residential Interior Designers that the applicant:

(1) Is at least twenty-one (21) years of age;

(2) Has not been convicted of an offense that bears directly on the fitness of the applicant to be registered;

(3) Has passed or supplied proof of passage of the examination required by §§ 17-35-601 — 17-35-606, 17-35-701, 17-35-702, and 17-35-801 — 17-35-803; and

(4) Meets any other requirements established by the board.

History. Acts 1993, No. 959, § 9.

Publisher's Notes. As originally enacted by Acts 1993, No. 959, § 9, subsection (b) began: "It is unlawful for any

company, partnership, association, corporation, or other similar organization, after January 1, 1994,".

17-35-802. Requirements for registration.

(a) Each applicant for registration shall provide substantial evidence to the State Board of Registered Residential Interior Designers that the applicant:

(1) Has taken and passed the Council for Qualification of Residential Interior Designers examination; and

(2)(A) Is a graduate of a five-year interior design program from an accredited institution and has completed at least one (1) year of diversified and appropriate residential interior design experience;

(B) Is a graduate of a four-year interior design program or a master's degree program in interior design from an accredited institution and has completed at least two (2) years of diversified and appropriate residential interior design experience; or

(C) Is a licensed architect certified by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

(b) Each interior design program must be an interior design program of an institution accredited by the North Central Association of Colleges and Schools, or a program determined by the State Board of Registered Residential Interior Designers to be substantially equivalent to such an accredited program.

(c) Six (6) years from the date of passage, completion of a monitored internship development program may be required as part or all of the residential interior design experience requirement.

(d) The State Board of Registered Residential Interior Designers shall waive examination requirements for an individual who provides proof of passage of the Council for Qualification of Residential Interior Designers examination and who is registered, licensed, or certified as an interior designer in another state, the District of Columbia, or a foreign country, provided that that jurisdiction's requirements for registration are substantially equivalent to those required for registration in this state.

(e) Every registration shall expire annually on a day designated by the State Board of Registered Residential Interior Designers.

History. Acts 1993, No. 959, §§ 8, 11, 13.

A.C.R.C. Notes. As enacted by Acts 1993, No. 959, § 8, also provided, in part, that an applicant may also satisfy the requirements of subsection (a) if the applicant has completed at least three (3) years of an interior design curriculum from an accredited institution and has completed three (3) years of diversified and appropriate residential interior design experience; or is a graduate of a two-year interior design program from an

accredited institution and has completed four years of diversified and appropriate residential interior design experience.

Acts 1993, No. 959, § 8 further provided that these additional methods of satisfying the requirements of subsection (a) would be null and void 4 years from the date of passage of the act.

Publisher's Notes. In reference to the term "date of passage," Acts 1993, No. 959 was approved on April 8, 1993 and became effective August 13, 1993.

17-35-803. Registration renewal.

(a) Every registered residential interior designer shall annually renew his or her registration, submit proof of completion of continuing education units as required by the State Board of Registered Residential Interior Designers, and pay the renewal fee established by the board.

(b) It is unlawful for any residential interior designer who fails to renew his or her registration to continue to use the title of “registered residential interior designer”.

History. Acts 1993, No. 959, § 13.

CHAPTER 36
LANDSCAPE ARCHITECTS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS STATE BOARD OF LANDSCAPE ARCHITECTS. [REPEALED.]
- 3. LICENSING.

Publisher’s Notes. As to registration of certain persons in practice prior to July 9, 1975 or July 1, 1977, see Acts 1975, No. 353, § 7 as amended by Acts 1977, No. 528, § 1.

Prior to the 1995 replacement of this volume, this chapter was codified as § 17-29-101 et seq.

RESEARCH REFERENCES

ALR. Liability for injury or death resulting when object is manually brought into contact with, or close proximity to, electric line. 33 A.L.R.4th 809.

SUBCHAPTER 1 — GENERAL PROVISIONS

- SECTION.
- 17-36-101. Title.
 - 17-36-102. Definitions.
 - 17-36-103. Penalties.

- SECTION.
- 17-36-104. Enforcement.
 - 17-36-105. Injunctions.

Cross References. Arkansas Architectural Act, § 17-15-101 et seq.

17-36-101. Title.

This chapter shall be known and may be cited as the “Landscape Architectural Practice Act”.

History. Acts 1975, No. 353, § 1; A.S.A. 1947, § 71-2901; Acts 1995, No. 904, § 1; 2009, No. 1367, § 16. **Amendments.** The 2009 amendment made no changes in this section.

17-36-102. Definitions.

(a) As used in this chapter and in § 17-15-201 et seq.:

(1)(A) “Landscape architecture” means:

(i) Any service or other work, the adequate performance of which requires landscape architectural education, training, and experience;

(ii) The performance of professional services such as consultation, investigation, reconnaissance, research, associated planning, design, preparation of drawings, specifications, and contract documents, and responsible supervision or construction management in connection with the development of land areas or water features where, and to the extent that, the dominant purpose of such services is landscape development, preservation, and enhancement, or determination of land uses, natural land features, and functional and aesthetic values;

(iii) The determination, location, and construction of aesthetically pleasing and functional approaches and settings for features in the landscape, plantings, landscape irrigation, landscape lighting layout, landscape grading, and landscape drainage;

(iv) Environmental planning; and

(v) The design of tangible objects and features necessary to the purpose outlined herein.

(B) “Landscape architecture” does not include the design of buildings, structures, or facilities ordinarily included in the practice of architecture or engineering; and

(2) “Landscape designer” means a person who makes plans or drawings for the selection, placement, or use of plants when the execution of such plans or drawings does not affect the public health, safety, or welfare.

(b) The title “landscape architect” shall be used by and shall apply only to a person who is licensed under the authority of this chapter.

(c) This chapter shall not be construed to:

(1) Implicitly amend the definition of “practice of engineering” in § 17-30-101 or otherwise limit the scope of the practice of engineering by engineers registered with the State Board of Licensure for Professional Engineers and Professional Surveyors; or

(2) Implicitly amend the definition of “practice of architecture” in § 17-15-102 or otherwise limit the scope of the practice of architecture by architects registered and licensed by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

History. Acts 1975, No. 353, § 2; A.S.A. 1947, § 71-2902; Acts 2001, No. 617, § 1; 2009, No. 1367, § 16.

Amendments. The 2009 amendment substituted “and in § 17-15-201 et seq.” for “unless the context otherwise requires”

in the introductory language of (a); deleted former (1) and redesignated the remaining subsections accordingly; added “Landscape Architects, and Interior Designers” in (c)(2); and made related and minor stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Professions, Occupations, and

Businesses, 24 U. Ark. Little Rock L. Rev. 535.

17-36-103. Penalties.

(a) It is a misdemeanor for a person to:

(1) Use the title of landscape architect, unless licensed by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers under this chapter and § 17-15-201 et seq.;

(2) Present as his or her own the license of another;

(3) Give false or forged evidence to the board or any member thereof in obtaining a license;

(4) Falsely impersonate any other practitioner of like or different name;

(5) Use or attempt to use a license that has been revoked;

(6) Otherwise violate any of the provisions of this chapter or § 17-15-201 et seq.; or

(7) Practice landscape architecture, unless duly licensed under this chapter and § 17-15-201 et seq.

(b) Such a misdemeanor shall be punishable by a fine of not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500) or imprisonment for not more than one (1) year, or both.

History. Acts 1975, No. 353, § 4; A.S.A. 1947, § 71-2904; Acts 1995, No. 904, § 2; 2001, No. 617, § 2; 2009, No. 1367, § 16.

Amendments. The 2009 amendment inserted “by the Arkansas State Board of

Architects, Landscape Architects, and Interior Designers” in (a)(1); inserted “§ 17-15-201 et seq.” in (a)(1), (a)(6), and (a)(7); and made related and minor stylistic changes.

17-36-104. Enforcement.

It is the duty of all duly constituted officers of the law of this state and all political subdivisions thereof to enforce the provisions of this chapter and to prosecute a person violating the provisions thereof.

History. Acts 1975, No. 353, § 6; A.S.A. 1947, § 71-2906; Acts 2001, No. 617, § 3; 2009, No. 1367, § 16.

Amendments. The 2009 amendment deleted the (a) designation; deleted (b); and made minor stylistic changes

17-36-105. Injunctions.

(a)(1) The violation of any provision of this chapter and performing or offering to perform any work or service in violation of this chapter or any provision thereof is declared to constitute a nuisance and a threat to the public health, safety, and welfare and may be enjoined by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers in the courts of this state, even though the violation may be punishable by fine.

(2) The intention of this section is to provide a speedy means of protecting the public.

(b) The board is not required to execute or give bond for cost, indemnity, or stay as a condition to the issuance of a restraining order or injunction, either temporary or permanent, in a court of this state.

History. Acts 2001, No. 617, § 4; 2009, No. 1367, § 16.

Amendments. The 2009 amendment substituted “Architects, Landscape Archi-

tects, and Interior Designers” for “Landscape Architects” in (a)(1); and made minor stylistic changes in (b).

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF LANDSCAPE ARCHITECTS

SECTION.
17-36-201 — 17-36-207. [Repealed.]

17-36-201 — 17-36-207. [Repealed.]

Publisher’s Notes. This subchapter was repealed by Acts 2009, No. 1367, § 17. The subchapter was derived from the following sources:

17-36-201. Acts 1975, No. 353, § 3; 1977, No. 528, § 2; A.S.A. 1947, § 71-2903; Acts 2001, No. 617, § 5.

17-36-202. Acts 1975, No. 353, § 3; 1977, No. 528, § 2; A.S.A. 1947, § 71-2903; Acts 2001, No. 617, § 6.

17-36-203. Acts 1975, No. 353, § 3; 1977, No. 528, § 2; A.S.A. 1947, § 71-2903; Acts 2001, No. 617, § 7.

17-36-204. Acts 1975, No. 353, § 3; 1977, No. 528, § 2; A.S.A. 1947, § 71-2903; Acts 2001, No. 617, § 8.

17-36-205. Acts 1975, No. 353, § 3; 1977, No. 528, § 2; A.S.A. 1947, § 71-2903; Acts 2001, No. 617, § 9.

17-36-206. Acts 1975, No. 353, § 3; 1977, No. 528, § 2; A.S.A. 1947, § 71-2903; Acts 1997, No. 296, § 3; 2001, No. 617, § 10.

17-36-207. Acts 2001, No. 617, § 11.

SUBCHAPTER 3 — LICENSING

SECTION.
17-36-301. License or permit required.
17-36-302. Application.
17-36-303. Examination.
17-36-304. Reciprocity.
17-36-305. Fees — Penalty for nonpayment.

SECTION.
17-36-306. Grounds for revocation.
17-36-307. Revocation proceedings.
17-36-308. Reissuance.
17-36-309. Exemptions from licensing.
17-36-310. Official seal.

A.C.R.C. Notes. Acts 1995, No. 904, § 6, provided: "Grandfather provision. Any individual who applies to the committee prior to December 1, 1995, and who demonstrates to the committee through the submission of work examples that he has been engaged in the practice of land-

scape architecture in the state of Arkansas and has derived a substantial portion of his livelihood from that practice, shall be entitled to receive a license to practice landscape architecture without further application or examination."

17-36-301. License or permit required.

(a)(1) A person shall not perform or offer to perform, either directly or indirectly, landscape architectural services or assume or use the title or designation of "landscape architect" unless the person has secured from the Arkansas State Board of Architects, Landscape Architects, and Interior Designers a license as a landscape architect under this subchapter and shall thereafter comply with the provisions of this chapter and § 17-15-201 et seq.

(2) It is the purpose of this chapter to safeguard the health, safety, and welfare of the public.

(b) Every holder shall display the license or permit in a conspicuous place.

History. Acts 1975, No. 353, § 3; A.S.A. 1947, § 71-2903; Acts 2001, No. 617, § 12; 2009, No. 1367, § 18.

Amendments. The 2009 amendment, in (a)(1), substituted "Architects, Land-

scape Architects, and Interior Designers" for "Landscape Architects," inserted "and § 17-15-201 et seq.," and made minor stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Professions, Occupations, and

Businesses, 24 U. Ark. Little Rock L. Rev. 535.

17-36-302. Application.

Application for licensure shall be on forms prescribed and furnished by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers and shall contain statements under oath giving a detailed summary of the applicant's education and technical experience.

History. Acts 1975, No. 353, § 3; A.S.A. 1947, § 71-2903; Acts 2001, No. 617, § 13; 2009, No. 1367, § 18.

Amendments. The 2009 amendment

substituted "Architects, Landscape Architects, and Interior Designers" for "Landscape Architects."

17-36-303. Examination.

- (a) An applicant for licensure shall:
 - (1) Be at least twenty-one (21) years of age;
 - (2) Be of good moral character; and
 - (3) Pass an examination covering the matters confronting landscape architects that is prepared by:

- (A) The Arkansas State Board of Architects, Landscape Architects, and Interior Designers; or

- (B) Another entity as selected by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

- (b) In order to qualify for examination, the applicant must:

- (1) Hold a degree in landscape architecture from an institution accredited by an appropriate authority selected by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers and have satisfactory experience in landscape architecture of a minimum of two (2) years;

- (2) Hold a degree in a field related to landscape architecture as determined by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers and have four (4) years of experience in landscape architecture satisfactory to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers; or

- (3) Have seven (7) years of experience in landscape architecture satisfactory to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

- (c) The Arkansas State Board of Architects, Landscape Architects, and Interior Designers may require that an application be accompanied by a certificate from the Council of Landscape Architectural Registration Boards that documents that the applicant possessed the qualifications for examination under this section.

- (d) Examinations for the license shall be administered by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers or its appointed representative at least one (1) time each year if the Arkansas State Board of Architects, Landscape Architects, and Interior Designers has received applications during the period since the last examination was given.

- (e) The Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall publish appropriate announcements and shall conduct the examinations at the times designated.

History. Acts 1975, No. 353, § 3; 1977, No. 528, § 2; A.S.A. 1947, § 71-2903; Acts 1995, No. 904, § 3; 2001, No. 617, § 14; 2009, No. 1367, § 18.

Amendments. The 2009 amendment subdivided (a) and substituted “Archi-

tects, Landscape Architects, and Interior Designers” for “Landscape Architects” in (a)(3)(A); substituted “of two (2) years” for “period of time as determined by the board” in (b)(1); and made related and minor stylistic changes

17-36-304. Reciprocity.

The Arkansas State Board of Architects, Landscape Architects, and Interior Designers may provide for licensure of an applicant who is legally registered or licensed as a landscape architect in any other state whose qualifications for licensure are generally equivalent to those of Arkansas.

History. Acts 1975, No. 353, § 3; 1977, No. 528, § 2; A.S.A. 1947, § 71-2903; Acts 1995, No. 904, § 4; 2001, No. 617, § 15; 2009, No. 1367, § 18.

Amendments. The 2009 amendment substituted “Architects, Landscape Architects, and Interior Designers” for “Landscape Architects.”

17-36-305. Fees — Penalty for nonpayment.

(a)(1) Every landscape architect shall pay an annual license fee in an amount determined by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers not to exceed three hundred dollars (\$300). The fee shall be due and payable annually on a date designated by the board.

(2)(A) Each license shall expire annually on a date designated by the board, and each licensee whose license is not renewed by the board within thirty (30) days thereafter shall not perform or offer to perform any work or service as a landscape architect.

(B) The board shall issue a renewal to each licensee who submits:

(i) A renewal application on a form approved by and received by the board;

(ii) The annual license fee under subdivision (a)(1) of this section; and

(iii) Documentation acceptable to the board of the minimum number of continuing education units.

(C) A landscape architect who does not renew his or her license within thirty (30) calendar days after the expiration of the prior year’s license shall pay a late fee not to exceed fifty dollars (\$50.00) each month or part thereof not to exceed ninety (90) calendar days after the expiration date.

(D) A license that is not renewed within ninety (90) calendar days after the expiration date is void and shall not be renewed.

(E)(i) A landscape architect who fails to renew his or her license within ninety (90) calendar days after the expiration date due to nonpayment of fees or failure to comply with continuing education requirements may apply for reinstatement of his or her license.

(ii) The application for reinstatement shall be accompanied by documentation of continuing education units, a reinstatement fee not to exceed five hundred dollars (\$500) per year for each year or portion thereof since the date of expiration of the license, both as determined by the board, and the annual license fee.

(iii) The board may reinstate the license if it determines that the applicant is able to practice as a landscape architect without danger to the public health, safety, and welfare.

(iv) However, after three (3) years following the expiration date of a license that has not been renewed or reinstated by the board, the applicant may be relicensed only upon successful completion of the examination for new applicants under this chapter and other proof of the applicant's qualifications to practice landscape architecture as required by the board.

(b)(1) The fees for examination and reexamination shall be the cost of the examination as determined by the board.

(2) The application fee shall not exceed two hundred fifty dollars (\$250).

(3) The examination administration fee shall not exceed two hundred fifty dollars (\$250).

(4) The fee for a duplicate certificate shall not exceed one hundred dollars (\$100).

(c) The board may provide for the issuing of emeritus licenses at an annual fee and subject to conditions as determined by the board to landscape architects who:

(1) Are at least sixty-five (65) years of age;

(2) Have retired; and

(3) Do not practice landscape architecture.

History. Acts 1975, No. 353, § 3; A.S.A. 1947, § 71-2903; Acts 2001, No. 617, § 16; 2009, No. 1367, § 18.

Amendments. The 2009 amendment substituted "Architects, Landscape Architects, and Interior Designers" for "Landscape Architects" in (a)(1); subdivided

(a)(2)(B); inserted "for reinstatement" in (a)(2)(E)(ii); in (b), deleted "and examination administration" following "application" inserted (b)(3), and redesignated the subsequent subdivision accordingly; subdivided (c); and made related and minor stylistic changes.

17-36-306. Grounds for revocation.

The Arkansas State Board of Architects, Landscape Architects, and Interior Designers may deny, suspend, or revoke the license of a landscape architect upon proof that:

(1) The holder of the license is practicing in violation of this chapter or in violation of the proper rules of the board governing this chapter;

(2) The license or certificate has been obtained by fraud or misrepresentation or the person named therein has obtained it by fraud or misrepresentation;

(3) Money other than the regular fees provided for has been paid for the license or certificate;

(4) The holder of the license or certificate is falsely impersonating a practitioner or former practitioner of a like or different name or is practicing under an assumed or fictitious name;

(5) The holder of the license or certificate has been guilty of a felony;

(6) The holder of the license or certificate has been guilty of fraud or deceit or of gross negligence or misconduct in the practice of landscape architecture;

(7) The holder of the license or certificate affixed, or permitted to be affixed, his or her seal or name to plans, specifications, drawings, or

related documents that were not prepared by the holder or under his or her responsible supervisory control;

(8) The holder of the license or certificate has been adjudged mentally incapable by a court of competent jurisdiction;

(9) The holder of the license has committed gross unprofessional conduct; or

(10) The holder of the license has:

(A) Had a professional license suspended or revoked;

(B) Had imposed other disciplinary action by a regulatory body of another state for any cause other than failure to pay applicable fees; or

(C) Surrendered or did not renew a professional license after the initiation of any investigation or proceeding by such a body.

History. Acts 1975, No. 353, § 5; A.S.A. 1947, § 71-2905; Acts 2001, No. 617, § 17; 2009, No. 1367, § 18.

Amendments. The 2009 amendment substituted “Architects, Landscape Archi-

itects, and Interior Designers” for “Landscape Architects” in the introductory language; deleted “and regulations” following “rules” in (1); and made minor stylistic changes in (1), (3) and (7).

17-36-307. Revocation proceedings.

(a)(1) A person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against a licensee. The charges shall be:

(A) In writing;

(B) Sworn to by the person making them; and

(C) Filed with the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

(2) On its own motion, the board may initiate a proceeding against a licensee.

(b) All charges deemed worthy of consideration by the board shall be investigated by the board.

(c)(1) When the board determines that there is sufficient evidence of a violation of this chapter or board regulations, the board may conduct a hearing.

(2) The board shall conduct the hearing under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) If after the hearing the board finds that the individual has violated applicable law, the board may impose any one (1) or more of the following sanctions:

(1) Suspension, revocation, or denial of the license or renewal thereof;

(2) A civil penalty as provided in § 17-15-203;

(3) Require completion of appropriate educational programs or courses;

(4) Require successful completion of the licensing examination;

(5) Place conditions or restrictions upon the licensee’s license or practice; or

(6) Other requirements or penalties as may be appropriate to the circumstances of the case and that would achieve the desired disciplinary purposes.

History. Acts 1975, No. 353, § 5; A.S.A. 1947, § 71-2905; Acts 2001, No. 617, § 18; 2009, No. 1367, § 18.

Amendments. The 2009 amendment substituted “Architects, Landscape Archi-

tects, and Interior Designers” for “Landscape Architects” in (a)(1)(C); substituted “17-15-203” for “17-36-204” in (d)(2); and made stylistic changes.

17-36-308. Reissuance.

The Arkansas State Board of Architects, Landscape Architects, and Interior Designers may reissue a license to a person whose license has been suspended, revoked, or surrendered after receipt of a complaint or the initiation of an investigation if no charges of violation of this chapter are pending in a court of record in this state and three (3) or more members of the board vote in favor of reissuance.

History. Acts 1975, No. 353, § 5; A.S.A. 1947, § 71-2905; Acts 2001, No. 617, § 19; 2009, No. 1367, § 18.

Amendments. The 2009 amendment substituted “Architects, Landscape Archi-

tects, and Interior Designers” for “Landscape Architects,” deleted “for reasons it may deem sufficient” following “Interior Designers,” and made minor stylistic changes.

17-36-309. Exemptions from licensing.

- (a) The following are exempt from licensing under this chapter:
 - (1) The practice of landscape architecture by any person who acts under the supervision of a licensed landscape architect or by an employee of a person lawfully engaged in the practice of landscape architecture and who, in either event, does not assume responsible charge of design or supervision;
 - (2) The practice of landscape architecture by employees of the United States Government while engaged in the practice of landscape architecture within this state on behalf of the United States Government;
 - (3) The practice of landscape architecture by employees of the state or a municipal government while providing services for the governmental employer’s facilities;
 - (4) The practice of planning as customarily done by regional and urban planners;
 - (5) The practice of arborists, foresters, gardeners, nurserymen, landscape contractors, home builders, floriculturists, ornamental horticulturists, landscape designers, irrigation designers, and irrigation contractors performing their respective trades or professions; and
 - (6) The practice of architecture or engineering as defined by the laws of this state.
- (b) None of the persons referred to in subsection (a) of this section shall use the title of landscape architect without complying with the provisions of this chapter.

History. Acts 1995, No. 904, § 5; 2001, No. 617, § 20.

17-36-310. Official seal.

(a) Upon licensure, each licensee under this chapter shall obtain a seal of such design as the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall authorize and direct.

(b) Plans and specifications prepared by, or under the supervision of, a licensed landscape architect shall be stamped with this seal during the life of the landscape architect's license.

(c) It is unlawful for anyone to stamp or seal any documents with the seal after the license of the landscape architect named thereon has expired or has been surrendered, suspended, or revoked.

History. Acts 2001, No. 617, § 21; 2009, No. 1367, § 19.

Amendments. The 2009 amendment subdivided the section; substituted "Ar-

chitects, Landscape Architects, and Interior Designers" for "Landscape Architects" in (a); and made a minor stylistic change.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Professions, Occupations, and

Businesses, 24 U. Ark. Little Rock L. Rev. 535.

CHAPTER 37

PEST CONTROL SERVICES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. LICENSING.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-30-101 et seq.

RESEARCH REFERENCES

ALR. Exterminator's tort liability for personal injury or death directly resulting from operations. 29 A.L.R.4th 987.

Liability of termite or other pest control

or inspection contractor for work or representations. 32 A.L.R.4th 682.

C.J.S. 3 C.J.S., Agri., § 101 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-37-101. Title.

17-37-102. Definitions.

SECTION.

17-37-103. Penalties.

17-37-104. Injunctions.

SECTION.
17-37-105. Administration.
17-37-106. Prior rules and regulations.

SECTION.
17-37-107. Fees.

Effective Dates. Acts 1975, No. 488,
§ 15: July 1, 1975.

17-37-101. Title.

This chapter shall be known by the short title of “Arkansas Pest Control Law”.

History. Acts 1975, No. 488, § 1; A.S.A.
1947, § 77-1801.

17-37-102. Definitions.

As used in this chapter:

- (1) “Agent” means any person registered with the State Plant Board by a licensed operator to solicit or sell pest control service which the operator is licensed to perform, including the signing of contracts, making inspections for the purpose of servicing or continuing contracts, and supervising workers and working crews in carrying out pest control service, when so designated by the licensed operator, or except as may be limited by the board in its rules and regulations made under authority of this chapter. This is not to be construed as relieving the licensed operator in any way of being responsible for personal and direct supervision of all work performed under his or her license;
- (2) “Applicant” means any person making application for a license to engage in pest control service work;
- (3) “Board” means the State Plant Board;
- (4) “Commercial applicator” means a person who has demonstrated by written examination his or her knowledge of the nature and effect of pesticides and how to use, supervise the use, or demonstrate the use of restricted-use pesticides, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act, safely and properly. Qualification as a commercial applicator shall be integral to qualification as a licensed operator or qualified operator and vice versa;
- (5) “Director” means the Director of the State Plant Board;
- (6) “FIFRA” means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which classifies, regulates, and provides for the certification of all users of restricted-use pesticides, as defined in that act, including all persons who engage in commercial and noncommercial pest control service work;
- (7) “Fungi or rot control responsibility” means that the license holder or licensed operator shall be held responsible for fungi or rot control

only on substructure timbers such as sills, subsills, piers, floor joists, subfloors, and floors;

(8) "Household pest and rodent" means any mammal, bird, arthropod, or reptile that may infest or invade a home or other buildings or the immediate area around or under a home or buildings, other than wood-damaging or wood-destroying insects, fungi, or organisms;

(9) "License holder" means the person, firm, or corporation to which a license is issued, the person being himself or herself a licensed operator or there being one (1) or more licensed operators in the employ of the person, firm, or corporation;

(10) "Licensed operator" means a person who has fully qualified and has passed the board's written examination and has in force a valid license from the board to engage in the work indicated in the license. The person shall also have met the requirements of and be eligible for certification under the Federal Insecticide, Fungicide, and Rodenticide Act and state law as a commercial applicator;

(11) "Noncommercial applicator" means any person who uses, supervises the use of, or demonstrates the use of a restricted-use pesticide in any classification on his or her own or his or her employer's property who does not hold himself or herself out as being engaged for compensation in pest control service work;

(12) "Person" means an individual, firm, partnership, corporation, organization, association, or any combination thereof, whether or not incorporated;

(13) "Pest control service" means any person who for compensation gives advice or engages in work to prevent, control, or repel arthropods, mammals, birds, reptiles, or wood-damaging or wood-destroying organisms that may invade or infest homes, other buildings, or similar structures and shall include arthropods, mammals, birds, reptiles, weeds, and plant diseases that may invade, infest, or infect shade trees, shrubs, lawns, turf, and pecan groves. This term shall also include any person who issues letters of clearance, or who shall solicit such work in any manner, but the term shall not be construed to include agricultural crops from planting to harvest other than those mentioned in this subdivision (13);

(14) "Qualified operator" means a person who has fully qualified and has passed the board's written examination working under the bond and insurance of a license holder or licensed operator instead of his or her own. The person shall also have met the requirements of and be eligible for certification under the Federal Insecticide, Fungicide, and Rodenticide Act and state law as a commercial applicator;

(15) "Soil pretreatment" means chemical treatment of the soil before or during construction of any building for the purpose of preventing or controlling subterranean termites;

(16) "Solicitor" means any person registered with the board by a licensed operator to solicit or sell pest control service work, which the operator is licensed to perform, but the solicitor may not perform any pest control service work nor be placed in charge of workers or working crews;

(17) “Supervise” or “under the direct supervision of” means the act or process whereby the application of a pesticide is made by a competent and registered person acting under the instructions and control of a licensed operator or qualified operator who is responsible for the actions of that person and who is available if and when needed, even though the operator is not physically present at the time and place the pesticide is applied;

(18) “Termite and other structural pests” means any wood-damaging or wood-destroying insect, fungus, or organism;

(19) “Termite infestation” means any active termites found in or on a building, its foundation or attached appurtenances, or under the building, in or on debris, or in or on stumps under the building; and

(20) “Weed control” means the prevention, destruction, or removal of any plant from where it is not wanted by the use of herbicides.

History. Acts 1975, No. 488, § 2; 1985, Fungicide, and Rodenticide Act, referred to in this section, is codified as 7 U.S.C. No. 385, § 2; A.S.A. 1947, § 77-1802.

U.S. Code. The Federal Insecticide, §§ 136-136y.

17-37-103. Penalties.

(a) The violation of any of the provisions of this chapter or any of the rules and regulations of the State Plant Board promulgated under this chapter shall be deemed a misdemeanor.

(b) Upon conviction, an offender shall be punished by a fine of not less than fifty dollars (\$50.00) for the first offense, not less than one hundred dollars (\$100) for the second offense, and not less than two hundred dollars (\$200) plus ten (10) days in jail for each offense thereafter, with no suspension of fines or imprisonment.

History. Acts 1975, No. 488, § 11; A.S.A. 1947, § 77-1810.

17-37-104. Injunctions.

(a) The State Plant Board is authorized to apply to any court of competent jurisdiction for, and the court, upon hearing and for cause shown, may grant, a temporary or permanent injunction restraining any person from violating any provisions of this chapter or of the rules and regulations made under the authority of this chapter.

(b) The injunction is to be without bond.

History. Acts 1975, No. 488, § 10; A.S.A. 1947, § 77-1809.

17-37-105. Administration.

(a)(1) The State Plant Board is vested with the authority to carry out the provisions of this chapter, including the employment of necessary personnel.

(2)(A) The board shall have the authority to adopt rules and regulations which shall have the full force and effect of law for the purpose of carrying into effect the provisions of this chapter.

(B) The rules and regulations may include the authorization to require licensed operators to submit written monthly reports setting out the description and location of properties on which pest control service has been rendered and such other information relative thereto as the board shall deem necessary.

(C) The rules and regulations may include minimum standards for pest control service work and shall include fees sufficient to pay the cost of carrying out the provisions of this chapter.

(b) The board or its authorized representative may enter upon and inspect properties, plants, or products for the purpose of carrying out the provisions of this chapter and of carrying out the rules and regulations made pursuant to this chapter.

History. Acts 1975, No. 488, § 3; A.S.A. 1947, § 77-1803.

17-37-106. Prior rules and regulations.

The rules and regulations made under authority of Acts 1965, No. 111 [repealed], shall continue in force and have the effect of law under authority of this chapter, except that those parts that may be in conflict with this chapter shall be considered invalid, and except as subsequently amended, invalidated, or added to by the State Plant Board.

History. Acts 1975, No. 488, § 12; A.S.A. 1947, § 77-1811.

17-37-107. Fees.

(a) In its rules and regulations made pursuant to this chapter and after a public hearing, the State Plant Board shall establish license, registration, inspection, reinspection, reporting, and examination fees sufficient to carry out the provisions of this chapter.

(b) All fees collected under this chapter shall be deposited into the State Treasury to the credit of the board and are to be used in carrying out the provisions of this chapter.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804.

Cross References. Issuance fee — License expiration, § 17-37-211.

SUBCHAPTER 2 — LICENSING

SECTION.

17-37-201. License requirement.

17-37-202. Exemption for unlicensed operators under supervision of license holders.

SECTION.

17-37-203. Exemptions for noncommercial applicators — Limitations.

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SECTION.

- 17-37-205. Applicants previously convicted of violations.
- 17-37-206. License application.
- 17-37-207. License classification.
- 17-37-208. Licensing standards.
- 17-37-209. Eligibility for reexamination.
- 17-37-210. Bond and insurance requirements.
- 17-37-211. Issuance fee — License expiration.
- 17-37-212. Transferability — Change in licensee status.
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SECTION.

- 17-37-214. Nonresident licensee — Resident agent.
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- 17-37-216. Refusal to issue license.
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- 17-37-218. Invalidation or nonrenewal proceedings.
- 17-37-219. Automatic invalidity of license.
- 17-37-220. Hearing and appeal.
- 17-37-221. Contracts, reports, and records.

Effective Dates. Acts 1975, No. 488, § 15: July 1, 1975.

Acts 1985, No. 1036, § 3: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law requires a person who fails the pest control examination to wait at least six months before being eligible for reexamination; that such waiting period is inequitable and should immediately be reduced; and that this act reduces such waiting period and should be given effect immediately in order to cure the inequity caused by the present law. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval."

Acts 2009, No. 367, § 2: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the surety bond and insurance requirements for pest control licensees dealing with hazardous chemicals are necessary to insure the public health and safety; and that it is imperative that these new requirements coincide with the start of the next fiscal year. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009."

17-37-201. License requirement.

(a) No person shall for compensation engage in pest control service work in any manner as defined in this chapter without first having qualified, including the passing of the State Plant Board's written examination, and having in force a valid license issued by the board for that purpose.

(b) It shall be unlawful for any person other than a licensed operator, qualified operator, noncommercial applicator, or persons working under their direct supervision to use restricted-use pesticides as defined by the Federal Insecticide, Fungicide, and Rodenticide Act.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804.

U.S. Code. The Federal Insecticide,

Fungicide, and Rodenticide Act is codified as 7 U.S.C. §§ 136-136y.

17-37-202. Exemption for unlicensed operators under supervision of license holders.

(a) Persons who are not licensed as pest control operators under this chapter but who worked as unlicensed pest control operators prior to November 1, 1984, under the direct supervision of a holder of a license under this chapter, and who are working for such a license holder on June 28, 1985, may continue that arrangement without complying with this chapter.

(b) At the time the unlicensed pest control operators terminate their relationship with the license holder, the unlicensed pest control operators shall not thereafter perform services as pest control operators unless and until they have qualified under this chapter. However, when the licensed manager of a pest control company terminates his or her employment with the company, and if the company had been in operation at least one (1) year prior to the date of termination, the pest control company may continue to operate for a period not to exceed six (6) months after the date of termination, notwithstanding that the manager was the only licensed personnel in the company.

History. Acts 1985, No. 1045, § 1;
A.S.A. 1947, § 77-1812.

17-37-203. Exemptions for noncommercial applicators — Limitations.

(a)(1) This chapter shall not apply either to persons doing pest control to their own property or to their employees hired as laborers only who do not hold themselves out as being engaged for compensation in pest control service work.

(2)(A) However, no noncommercial applicator shall use, supervise the use of, or demonstrate the use of a restricted-use pesticide, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act, unless the person has passed a prescribed examination and has been licensed by the State Plant Board.

(B)(i) The examination shall demonstrate the applicant's knowledge of how to apply pesticides under the classifications applied for and his or her knowledge of the nature and effect of the pesticides.

(ii) If the applicant is found qualified and has paid the required examination and license fees, the board shall issue a noncommercial applicator license limited to such activities and classifications as qualified for.

(C)(i) The license shall expire June 30 each year unless suspended or revoked prior thereto for cause.

(ii) Reexamination prior to license renewal may be required to ensure a continuing level of competence and ability to use restricted-use pesticides safely and properly as technology changes.

(b) Except for the requirements stated in this section, the noncommercial applicator shall be exempt from all other requirements of this chapter.

History. Acts 1975, No. 488, §§ 8, 9; A.S.A. 1947, §§ 77-1808, 77-1808.1. cide, Fungicide, and Rodenticide Act, referred to in this section, see note to § 17-37-201.
U.S. Code. As to the Federal Insecti-

17-37-204. Occupational licenses, etc.

No occupational license, authorization, or similar license taxes shall be issued by municipalities, counties, or other state or federal agencies, or subdivisions thereof, to any person to engage in pest control service work for compensation, unless the person holds a valid license issued by the State Plant Board to do that work.

History. Acts 1975, No. 488, § 8; A.S.A. 1947, § 77-1808.

17-37-205. Applicants previously convicted of violations.

Nothing in this chapter shall require the State Plant Board to issue a license or registration to an applicant who has been convicted in a court for a violation of this chapter or the Federal Insecticide, Fungicide, and Rodenticide Act.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804. cide, Fungicide, and Rodenticide Act, referred to in this section, see note to § 17-37-201.
U.S. Code. As to the Federal Insecti-

17-37-206. License application.

(a) Any person desiring to obtain a license for pest control service work shall make application to the State Plant Board on forms provided by the board, giving complete information requested.

(b) The applicant must prove to the satisfaction of the board that he or she is morally and financially responsible.

(c) An applicant must show proof of at least one (1) year of experience in the classification for which a license is desired or have completed at least two (2) years of work in an accredited college or university, including the completion of at least one (1) basic course in entomology, to be eligible to take the examination in either of the following classifications:

- (1) Termite and other structural pests; or
- (2) Household pests and rodent control.

(d)(1) To demonstrate the ability of the applicant to perform the classification of work for which a license is desired and to demonstrate his or her knowledge of the nature and effect of pesticides and how to apply them safely and properly, the board shall prescribe in advance an examination in writing to be taken by the applicant and to be given by a person designated by the board who is not interested financially or otherwise in pest control service work in Arkansas.

(2) This representative shall examine the applicant by a written examination as prescribed, and the examination shall be graded by the examiner with the results being certified to the board for approval either as having passed or failed the examination as the case may be.

(e)(1) The board is directed to give examinations on various classifications of pest control work on designated dates at least one (1) time each quarter.

(2) If the applicant is found qualified in one (1) or more of the classifications, he or she may be licensed to do the classification of work for which he or she is found qualified upon the payment of the required fees.

(f) By virtue of these qualifications, the applicant shall be eligible for certification under the Federal Insecticide, Fungicide, and Rodenticide Act or state law as a commercial applicator.

(g) By regulation, the board shall make provisions to ensure that applicators continue to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(h) Any licensee who fails to renew his or her license for a period of two (2) years shall be required to follow the same procedure as a new applicant in obtaining another license.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804.

U.S. Code. As to the Federal Insecti-

cide, Fungicide, and Rodenticide Act, referred to in this section, see note to § 17-37-201.

17-37-207. License classification.

(a) The license shall specify the classification of work in which the license holder is authorized to engage and shall show the name and address of the person, firm, or corporation to which it is issued and the name of the licensed or qualified operator, if he or she is someone other than the license holder.

(b)(1) The license holder shall do only the kind of work specified in the classification for which he or she has been licensed, regardless of whether for compensation or not.

(2) Any licensee performing any work in any classification for which he or she has not been licensed shall suffer invalidation of the license in any other classification.

(c)(1) The State Plant Board may classify or subclassify commercial and noncommercial licenses to be issued under this chapter as may be necessary for the effective administration and enforcement of the chapter.

(2) The classifications may include, but not be limited to:

(A) Industrial, institutional, structural, and health-related;

(B) Ornamental and turf;

(C) Agricultural; and

(D) Noncommercial applicators.

(3) Separate subclassifications may be specified as to methods used by any licensee to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds.

(4) Each classification shall be subject to separate testing procedures and requirements.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804.

17-37-208. Licensing standards.

(a) In promulgating regulations under this chapter, the State Plant Board shall prescribe standards for the licensing of applicators of pesticides.

(b) The standards shall relate to the use and handling of the pesticides or to the use and handling of the pesticide or class of pesticide covered by the individual's license and shall be relative to the hazards involved.

(c)(1) In determining standards, the board shall consider the characteristics of the pesticide formulation such as:

(A) The acute dermal and inhalation toxicity;

(B) The persistence, mobility, and susceptibility to biological concentration;

(C) The use experience which may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory toxicological information;

(D) The relative hazards of patterns of use such as granular soil applications, ultra low volume or dust aerial applications, or air blast sprayer applications; and

(E) The extent of the intended use.

(2) Further, the board shall take into consideration standards of the Environmental Protection Agency and is authorized to adopt these standards by regulation.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804.

17-37-209. Eligibility for reexamination.

Any applicant who fails to pass the written examination in any classification must wait at least three (3) months before being eligible to take another examination in the same classification.

History. Acts 1975, No. 488, § 4; 1985, No. 1036, § 1; A.S.A. 1947, § 77-1804.

17-37-210. Bond and insurance requirements.

(a) BOND.

(1) Before a license is issued or renewed, the State Plant Board shall be furnished an acceptable surety bond by each applicant for a license in either of the following classifications:

(A) Termite and other structural pests; or

(B) Household pests and rodent control.

(2)(A)(i) The bond shall be executed by the applicant for a termite and other structural pests license or any combination of licenses that includes termite and other structural pests as principal and by a

surety company licensed to do business in this state in the surety amount of one hundred thousand dollars (\$100,000).

(ii)(a) The bond shall be executed by an applicant for a household pests and rodent control license or any combination of licenses that includes household pests and rodent control as principal and by a surety company licensed to do business in this state in the surety amount of fifty thousand dollars (\$50,000).

(b) Subdivision (a)(2)(A)(ii)(a) of this section does not apply to a combination of licenses that includes termite and other structural pests.

(B) The bond shall be for a term not to exceed one (1) year and shall coincide with the licensing period.

(3)(A) A bond required by this chapter shall be in favor of the State of Arkansas for the benefit of any person damaged as the result of a violation of this chapter by an operator licensed under this chapter and for the benefit of any person who, after entering into a contract with the licensee, is damaged by the failure of the licensee to properly perform the contract.

(B) A person claiming against the bond may maintain an action at law against the licensee and the surety.

(C) The aggregate liability of the surety to all persons shall not exceed the sum of the bond.

(b) INSURANCE.

(1) In addition to the bond required in subdivision (a)(1) of this section, before a license is issued or renewed, each applicant for a license in the classification of household pests and rodent control or the classification of general fumigation shall furnish the board a certificate of insurance written by an insurance company authorized to do business in this state covering the public liability of the applicant for personal injuries for not less than twenty-five thousand dollars (\$25,000) for any one (1) person, and fifty thousand dollars (\$50,000) for any one (1) accident, and not less than five thousand dollars (\$5,000) for property damage.

(2) In addition to the bond required in subdivision (a)(1) of this section, before a license is issued or renewed, each applicant for a license or any combination of licenses that includes the classification of termite and other structural pests shall furnish the board a certificate of insurance for a general liability insurance policy written by an insurance company authorized to do business in this state covering public liability of the applicant for personal injuries and property damage in an amount not less than five hundred thousand dollars (\$500,000) per occurrence or five hundred thousand dollars (\$500,000) per aggregate.

(c) CANCELLATION.

(1) The bond and insurance shall not be cancelled or terminated until at least thirty (30) days after a notice of cancellation is received by the board.

(2) Upon failure of a licensee to maintain in full force and effect the bond and insurance required by this section, the license shall become

void and shall not be reinstated until a satisfactory bond and insurance have been filed.

History. Acts 1975, No. 488, § 5; A.S.A. 1947, § 77-1805; Acts 1993, No. 1116, §§ 1, 2; 1999, No. 845, § 1; 2009, No. 367, § 1.

Amendments. The 2009 amendment rewrote (a)(2)(A); in (b), inserted (b)(2),

redesignated the remaining text accordingly, and deleted “termite and other structural pests, the classification of” following “in the classification of” in (b)(1); and made minor stylistic changes.

CASE NOTES

ANALYSIS

Intent.
Suit Against Surety Proper.

Intent.

The General Assembly intended to require that the carrier give notice of cancellation, and until that is done, the policy, with regard to third parties, remains in full force and effect. *Jarboe v. Shelter Ins. Co.*, 307 Ark. 287, 819 S.W.2d 9 (1991).

Suit Against Surety Proper.

Trial court erred in granting a surety’s motion to dismiss buyers’ claims because the buyers could sue the surety since a

surety bond it had issued to an exterminating company was intended to protect members of the public from violations of the law by licensees, and its bond covered the writers of termite reports involved in the lawsuit; although the surety’s contract was with the company, the buyers were members of the class of persons that it was intended to benefit, because the surety issued the bond to an unregistered fictitious name, it would be necessary to further develop the facts as to the identity of the proper principal on the bond. *Gorman v. Gilliam*, 2010 Ark. App. 118, — S.W.3d — (2010).

Cited: *Jarboe v. Shelter Ins. Co.*, 317 Ark. 395, 877 S.W.2d 930 (1994).

17-37-211. Issuance fee — License expiration.

The fee for the issuance of a license in each classification shall be paid annually. The license shall expire June 30 following the date issued.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804.

Cross References. Fees generally, § 17-37-107.

17-37-212. Transferability — Change in licensee status.

(a) No license or registration shall be transferable.

(b) When there is a change in the status of a licensee, such as change of address, operator in charge, agents, or solicitors, the licensee shall immediately notify the State Plant Board of the changes.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804.

CASE NOTES

Cited: *Jarboe v. Shelter Ins. Co.*, 307 Ark. 287, 819 S.W.2d 9 (1991).

17-37-213. Agents and solicitors generally.

(a) Each licensed operator shall register with the State Plant Board the name and address of each agent or solicitor and shall pay to the board a registration fee annually for each solicitor and agent at the time of registration.

(b) All registrations shall expire when the license expires.

(c) In all cases in which a solicitor or agent violates the provisions of this chapter or the rules and regulations made under authority of this chapter, the violations shall be grounds for invalidation of the license held by the operator under which the solicitor or agent had been registered.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804.

17-37-214. Nonresident licensee — Resident agent.

Every nonresident licensee shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of this chapter or any liabilities arising from operation under this chapter.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804.

17-37-215. Operator's name.

(a) No licensed operator or qualified operator shall operate under more than one (1) company name in any one (1) category.

(b) No person shall issue a solicitor's or agent's license to any other person for the purpose of operating under any other name except that of the licensed operator who registers the solicitor or agent with the State Plant Board.

(c) All work shall be performed in the name of the licensed operator or his or her firm. All contracts, statements, bids, and letters shall be in his or her name and on his or her forms, and each agent shall drive vehicles lettered with the name of the licensed operator or his or her firm.

History. Acts 1975, No. 488, § 4; A.S.A. 1947, § 77-1804.

17-37-216. Refusal to issue license.

The State Plant Board shall have the authority to refuse the issuance of a license even though a passing grade is made on the written examination if the board in its judgment, after reviewing the evidence of reference checks, deems the applicant is not morally and financially responsible.

History. Acts 1975, No. 488, § 7; A.S.A. 1947, § 77-1807.

17-37-217. Grounds for license invalidation or nonrenewal.

Acts which shall be grounds for invalidation or nonrenewal of a license shall include, but shall not be limited to, the following:

- (1) Misrepresentations for the purpose of deceiving or defrauding;
- (2) Making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage;
- (3) Failure of the licensee to supply the State Plant Board or its authorized representative, upon request, with true and accurate information concerning methods and materials used or work performed or other information essential to the administration and enforcement of this chapter;
- (4) Performing work, whether for compensation or not, in a classification for which the licensee does not have a license;
- (5) If repeated inspections by the board reveal that the licensee is not securing satisfactory control of the pests or diseases which the licensee engages to control or eradicate;
- (6) Failure of the licensee to register agents or solicitors, failure to pay registration, inspection, or reporting fees due, or failure to make reports within the time specified;
- (7) Conviction in any court of a violation of this chapter or of the Federal Insecticide, Fungicide, and Rodenticide Act;
- (8) Intentional misrepresentation in any application for a license;
- (9) Failure to correct substandard work;
- (10) Making a pesticide recommendation or application which is inconsistent with any or all of the following:
 - (A) The labeling;
 - (B) Federal or state registration; or
 - (C) Federal or state restrictions on the use of that pesticide; and
- (11) Falsification of records or failure to maintain or make available the records required by this chapter.

History. Acts 1975, No. 488, § 7; A.S.A. 1947, § 77-1807. cide, Fungicide, and Rodenticide Act, referred to in this section, see note to § 17-37-201.
U.S. Code. As to the Federal Insecti-

CASE NOTES

Cited: Wright v. Arkansas State Plant Bd., 311 Ark. 125, 842 S.W.2d 42 (1992).

17-37-218. Invalidation or nonrenewal proceedings.

- (a) Invalidation or nonrenewal proceedings may be initiated against a license holder in the same manner and for the same reasons as against a licensed operator or qualified operator.
- (b) The proceedings may be jointly and severally against any or all licensed operators or qualified operators employed by the license holder.

History. Acts 1975, No. 488, § 7; A.S.A. 1947, § 77-1807.

17-37-219. Automatic invalidity of license.

A license shall automatically become invalid should the licensed operator whose name appears on the license cease to personally supervise and be in direct charge of the pest control operation. The license shall remain invalid until some other person, having been examined in accordance with this chapter and the rules and regulations under this chapter, shall be certified as the licensed operator in his or her stead.

History. Acts 1975, No. 488, § 7; A.S.A. 1947, § 77-1807.

17-37-220. Hearing and appeal.

(a) When any person is refused a license or his or her license is not renewed, or when the State Plant Board contemplates invalidation of his or her license, he or she shall have the right of a hearing before the board or an authorized committee of the board by filing a written request for a hearing with the board by registered or certified mail.

(b) Any person whose license is denied, refused, or invalidated by the board may appeal the decision to the Pulaski County Circuit Court within twenty (20) days after official notification of the decision.

History. Acts 1975, No. 488, § 7; A.S.A. 1947, § 77-1807.

CASE NOTES

Cited: Wright v. Arkansas State Plant Bd., 311 Ark. 125, 842 S.W.2d 42 (1992).

17-37-221. Contracts, reports, and records.

(a) Every licensed operator shall enter into a written contract with the property owner when employed to control or eradicate termites or other structural pests, or in such other classifications as the State Plant Board may specify in its rules and regulations made under authority of this chapter. The contract for termite and other structural pests shall guarantee the performance of the work for at least one (1) year and that the property meets the minimum standards established by the board in its rules and regulations for the work, unless these standards are waived or altered upon approval of the board.

(b) A copy of the contract or "start-work agreement" and a complete outline of the work to be performed shall be given to the property owner before any work is started.

(c)(1) By the fifteenth of each month, every licensed operator shall file a report with the board covering termite and other structural pest work performed the previous calendar month, along with a copy of each

contract issued for the prevention, control, or eradication of termites and other structural pests and any other information deemed necessary by the board and stipulated in the rules and regulations made under authority of this chapter.

(2)(A) Reporting and payment of inspection fees may also be required for household pest and rodent control work or such other classifications as the board may specify if deemed necessary or if required by the Federal Insecticide, Fungicide, and Rodenticide Act.

(B)(i) All fees due the board shall be filed with the board by the fifteenth day of each month to cover work performed the previous calendar month.

(ii) If payment of fees due is delayed more than thirty (30) days, then the fees due shall be doubled.

(3) In addition, the reports shall include letters of clearance issued and service contracts issued even though no chemical treatments were carried out. Each report shall list the name and address of the owner, address of the property, length and nature of the guarantee, date the contract was issued, a plat or diagram showing the location of termite or other structural pest infestations, if present, location of damaged areas, and an outline of the work to be carried out.

(4) A report shall be filed each month even though no work is performed.

(d)(1) Each licensed operator, qualified operator, or license holder in any classification shall keep a complete record of all work performed, including copies of all contracts issued.

(2) The records shall be available for examination by the board or its representatives after reasonable notice and during normal business hours.

(3) The records shall be kept for at least two (2) years and shall contain information on kinds, amounts, uses, dates, and addresses of applications of restricted-use pesticides.

(e)(1) All licensed operators, qualified operators, or license holders shall stencil or paint on both sides of all motor equipment that requires a state vehicle license the name of the operator or company with letters at least two inches (2") high.

(2) Vehicles used only for sales or soliciting are excepted.

History. Acts 1975, No. 488, § 6; A.S.A. 1947, § 77-1806.

U.S. Code. As to the Federal Insecti-

cide, Fungicide, and Rodenticide Act, referred to in this section, see note to § 17-37-201.

CASE NOTES

Cited: Wright v. Arkansas State Plant Bd., 311 Ark. 125, 842 S.W.2d 42 (1992).

CHAPTER 38

PLUMBERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
 2. REGULATION BY STATE BOARD OF HEALTH.
 3. LICENSING.
 4. APPRENTICE PLUMBER PROGRAM.
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A.C.R.C. Notes. References to “this chapter” in subchapters 1-3 may not apply to subchapter 4 which was enacted subsequently.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-31-101 et seq.

RESEARCH REFERENCES

Am. Jur. 58 Am. Jur. 2d, Occup., §§ 90-98.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-38-101. Definitions.
 - 17-38-102. Prohibitions and penalties.
 - 17-38-103. Scope of state plumbing code.
 - 17-38-104. Inspections by state in cities having enforcement officers.
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SECTION.

- 17-38-105. Exceptions.
- 17-38-106. Water distribution piping under concrete slabs.

Effective Dates. Acts 1963, No. 555, § 4: July 1, 1963.

Acts 1975, No. 902, § 11: Apr. 7, 1975. Emergency clause provided: “The Legislature hereby finds that the public has been and will be injured through improper plumbing and improper construction of sewage and drain pipes and improper installation of natural gas and that this act is necessary for the public health and safety; and an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 816, § 14: Apr. 8, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present law on plumber licensure is antiquated; that this Act is designed to update such law to provide protection to citizens of the State of Ar-

kansas. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health,

Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2005, No. 1016, § 2: Mar. 18, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that public toilet and restroom facilities in financial institutions cannot be provided in a safe and secure manner; that because requiring financial institutions to maintain the facilities is adverse to the safety and well-being of their customers and employees; and that this act is immediately necessary to protect the public. Therefore, an emer-

gency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 466, § 3: June 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that ongoing construction projects will be slowed and their costs increased until PEX pipe is approved for installation under concrete slabs; that proposed construction projects will be on hold and their costs increased until PEX pipe is approved for installation under concrete slabs; and that this act is necessary because the construction industry and prospective home owners will suffer irreparable harm until this act becomes effective. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on June 1, 2007.”

17-38-101. Definitions.

As used in this chapter:

(1) “Apprentice plumber” means any person other than a journeyman or master plumber who is engaged in learning and assisting in the installation of plumbing and drainage and enrolled in a state-approved apprentice program;

(2) “Approved backflow preventor” means any permanent mechanical device or combination of permanent mechanical devices of whatever material that after installation according to the state plumbing regulations acts to prevent a reversal of the normal directional flow of potable water within the piping system in which it is installed;

(3) “Board” means the State Board of Health;

(4) “Department” means the Department of Health;

(5) “Gas utility serviceman” means an employee of a gas utility specially trained for gas service work with the utility;

(6) “Journeyman plumber” means any person other than a master plumber who is engaged in the practical installation of plumbing;

(7) “Master plumber” means any person skilled in the planning, superintending, and practical installation of plumbing and familiar with the laws, rules, and regulations governing it;

(8) "Plumbing" means:

(A) All piping, fixtures, appurtenances, and appliances:

(i) In connection with a supply of water within or adjacent to any building, structure, or conveyance on the premises and to the connection with a utility water meter or other public water utility property or other source of supply;

(ii) For sanitary drainage or storm drainage facilities, including venting systems for facilities, within or adjacent to any building, structure, or conveyance and connected with a public disposal or private disposal system or other point of disposal; or

(iii) Used in the installation of natural gas; and

(B) The installation, repair, maintenance, and renovation of all piping, fixtures, appurtenances, and appliances for a supply of water or for the disposal of waste water, liquid waste, or sewage within or adjacent to any building, structure, or conveyance on the premises and to the utility water meter or other public utility property or point-of-disposal waste; and

(9) "Restricted plumber" means a person qualified to install building water or sewer lines or other special phases of plumbing if the person has demonstrated competency for that particular phase of plumbing.

History. Acts 1951, No. 200, § 1; 1973, 1947, § 71-1205; Acts 1987, No. 816, § 1; No. 385, § 1; 1975, No. 902, § 1; A.S.A. 2003, No. 1217, § 1.

17-38-102. Prohibitions and penalties.

(a) Any person, firm, or corporation who engages in or follows the business or occupation of, or advertises or holds himself or herself or itself out as, or acts temporarily or otherwise as a plumber without first having secured the required license or permit, or who otherwise violates any provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than thirty (30) days, or by both fine and imprisonment. Each day during which a violation continues shall be a separate offense.

(b) Any person who shall do any act prohibited in this chapter or fail to obey a lawful order of the Department of Health or a judgment or decree of a court in connection with this chapter shall be punished by imprisonment in the county jail for not more than three (3) months or by a fine not exceeding five hundred dollars (\$500). Each day during which the violation continues shall constitute a separate offense.

(c) Any person, firm, or corporation who shall employ an apprentice of plumbing representing him or her to be a journeyman or who shall charge for an apprentice a journeyman's wage shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment in the county jail for not more than thirty (30) days. Each day of violation shall be a separate offense.

(d)(1) Every firm, person, or corporation who violates any of the provisions of this chapter or the rules or regulations or orders issued or promulgated by the State Board of Health or who violates any condition of a license, permit, certificate, or any other type of registration issued by the committee may be assessed a civil penalty by the committee.

(2) The penalty shall not exceed one thousand dollars (\$1,000) for each violation.

(3) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

(e) All fines collected under this section shall be deposited into the State Treasury and credited to the Plumbers Licensing Fund to be used to defray the costs of administering this chapter.

(f) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department is authorized to transfer all unexpended funds relative to fines collected under this section, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

(g) All rules and regulations promulgated pursuant to this section shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

History. Acts 1951, No. 200, § 11; 1215; Acts 1987, No. 816, § 10; 1995, No. 1975, No. 902, § 9; A.S.A. 1947, § 71- 788, § 1; 1997, No. 179, § 11.

17-38-103. Scope of state plumbing code.

(a) After adoption according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the provisions of the state plumbing code or amendments to the code as adopted by the State Board of Health defining plumbing work and prescribing minimum requirements for design, materials, appliances, workmanship, and methods of installation shall have the effect and force of law in the form of minimum standards statewide in application. The provisions shall apply to all types of buildings, private or public, rural or urban, including buildings owned by the state or any political subdivision of the state.

(b) All plumbing installations shall be made to conform to the state plumbing code.

History. Acts 1951, No. 200, § 12; A.S.A. 1947, § 71-1216; Acts 1987, No. 1963, No. 555, § 2; 1975, No. 902, § 10; 816, § 11; 2003, No. 1217, § 2.

17-38-104. Inspections by state in cities having enforcement officers.

(a)(1) The Department of Health inspectors may go into any city that has a city code enforcement officer and assist the city code enforcement officer for the purpose of ensuring that the minimum standards of the state plumbing code and plumber licensing regulations are being met.

(2) A written report of all inspections performed by the department inspector under this section shall be prepared by the department inspector, and a copy of the report shall be furnished within five (5) days to the city code enforcement officer and the owner of the property on which the inspection by the department inspector and city inspector is conducted.

(b) The Freedom of Information Act of 1967, § 25-19-101 et seq., shall apply to all documents compiled during an inspection conducted by the department.

History. Acts 1987, No. 816, § 11;
2003, No. 1217, § 3.

17-38-105. Exceptions.

This chapter shall not apply to:

(1) The installation, maintenance, repair, or renovation of fire protection sprinkler systems and related mechanical appurtenances beginning at a point where the pipe or piping system provides water used exclusively for these automatic sprinklers and their related appurtenances and to standpipes connected to automatic sprinkler systems;

(2) The construction, installation, maintenance, repair, renovation, or removal of pipe or piping systems and related mechanical appurtenances, appliances, or equipment used in connection with boilers or related pressure piping as defined in § 20-23-101, commercial or residential swimming pools, or irrigation sprinkler systems from a point or location in a source of potable water supply at which point or location there exists any approved backflow preventor;

(3) Piping, fixtures, appurtenances, and appliances for and in connection with liquefied petroleum gas systems as defined in § 15-75-102; or

(4)(A) The minimum number or location of plumbing fixtures or toilet facilities for use by the public within buildings, offices, or facilities maintained by banks, savings and loan associations, or credit unions for the conduct of their business.

(B) This exemption applies to any existing or future plumbing codes, rules, or regulations promulgated by the State Board of Health, or its successor agency.

(C) No municipality or county shall pass or enforce any code or regulation regarding the minimum number or location of plumbing fixtures or toilet facilities for use by the public within buildings, offices, or facilities maintained by banks, savings and loan associations, or credit unions.

History. Acts 2003, No. 1217, § 4;
2005, No. 1016, § 1.

17-38-106. Water distribution piping under concrete slabs.

- (a) Inaccessible water distribution piping under concrete slabs may be cross-linked polyethylene PEX (SDR9) pipe.
- (b) Cross-linked polyethylene PEX (SDR9) pipe shall meet ASTM F-876/F-877 and NSP standards 14 and 61.

History. Acts 2007, No. 466, § 1.

A.C.R.C. Notes. Acts 2007, No. 466, § 2, provided: “If the 2006 State Plumbing Code includes the same provisions as in

Section 1 of this act, this act expires on the effective date of the 2006 State Plumbing Code.”

SUBCHAPTER 2 — REGULATION BY STATE BOARD OF HEALTH

- | | |
|---|--|
| SECTION. | SECTION. |
| 17-38-201. Powers and duties generally. | 17-38-204. Local regulatory authority — |
| 17-38-202. Committee of Plumbing Examiners. | Exceptions. |
| 17-38-203. Regulation of training. | 17-38-205. Disposition of funds — Loans. |

Effective Dates. Acts 1951, No. 200, § 15: Feb. 28, 1951. Emergency clause provided: “The Legislature hereby finds that the public has been and will be injured through improper plumbing and improper construction of sewage and drain pipes and that this act is necessary for the public health and safety, and an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval.”

Acts 1957, No. 372, § 3: July 1, 1957.

Acts 1975, No. 902, § 11: Apr. 7, 1975. Emergency clause provided: “The Legislature hereby finds that the public has been and will be injured through improper plumbing and improper construction of sewage and drain pipes and improper installation of natural gas and that this act is necessary for the public health and safety; and an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 816, § 14: Apr. 8, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present law on plumber licensure is antiquated; that this Act is designed to update such law to provide protection to citizens of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the pub-

lic peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 638, § 5: Mar. 22, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the use of corrugated stainless steel is encouraged in the construction of natural gas plumbing systems; however, current gas plumbing code prohibits the use of corrugated stainless steel piping. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 982, § 5: Apr. 6, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the regular inspection of natural gas piping system and gas utilization equipment serving state-accredited schools is encouraged; however, nothing in the current gas plumbing code requires such inspections. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the Gen-

eral Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately nec-

essary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-38-201. Powers and duties generally.

(a) The State Board of Health shall have the following powers:

(1) To ensure that the construction, installation, and maintenance of plumbing in connection with all buildings in this state, including buildings owned by the state or any political subdivision thereof, shall be safe and sanitary in order to safeguard the public health;

(2)(A) To have general supervision of all plumbing and, according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall prescribe and publish and enforce minimum reasonable standards that shall be uniform as far as practicable.

(B) The Director of the Department of Health or any employee of the Department of Health designated by the board may act for the State Board of Health except in adoption of rules and regulations;

(3) To prescribe rules and regulations as to the qualifications, examination, and licensing of master plumbers and journeyman plumbers and for the registration of apprentice plumbers;

(4) To assign the duties of the Committee of Plumbing Examiners;

(5)(A) To prescribe rules and regulations as to the use of corrugated stainless steel piping.

(B) Such rules and regulations shall be no more stringent than the American National Standards for Interior Fuel Gas Piping Systems; and

(6)(A) To require that a survey and inspection for leaks, proper venting, and general condition of the natural gas piping system and gas utilization equipment connected thereto, including appliances, serving any school accredited by the State Board of Education shall be performed as frequently as necessary, but at intervals not exceeding one (1) year. School officials shall be responsible to ensure that these surveys and inspections are performed by a qualified agency and that proof of the survey results are provided to the Division of Protective Health Codes of the Department of Health by September 1 each year.

(B) As used in subdivision (a)(6)(A) of this section, "qualified agency" means any individual, firm, corporation, or company which either in person or through a representative is engaged in and is responsible for the installation, replacement, or repair of consumer

gas piping, or the connection, installation, repair, or servicing of gas utilization equipment, and is experienced in such work and familiar with all precautions required and has complied with all requirements of the State Board of Health and Department of Health and the codes and regulations.

(b) The State Board of Health shall by regulation prescribe rules and regulations governing plumbing apprentice training committees and, in cooperation with educational authorities, assist in related training programs for plumbers.

(c) The department may exercise such powers as are reasonably necessary to carry out the provisions of this chapter. Among other things, it may:

(1) Employ competent supervisors who shall be licensed plumbers or licensed engineers, employ other assistants, and prescribe qualifications and assign duties for the supervisors and assistants;

(2) Conduct investigations and experiments for the advancement of technical knowledge relating to plumbing and hold public meetings and attend or be represented at the meetings within or without the state;

(3) Enter and inspect at reasonable hours plumbing installations on private or public property and disseminate information relative to the provisions of this chapter;

(4) Prepare and cause to be printed such codes, bulletins, or other documents as may be necessary and furnish copies thereof to those engaged in the plumbing business and to the public upon request;

(5) Charge a reasonable fee for plumbing inspections;

(6) Furnish upon request of the owner of the building or of the plumber making the plumbing installation, recommendations or a certificate of inspection;

(7) Issue restricted licenses limited to gas fitter, residential and governmental maintenance, service line installation, solar mechanic, and hospital maintenance licenses if the licensee has demonstrated competency for the particular phase of plumbing for which the person is licensed and if the State Board of Health has adopted regulations defining restrictions in the type of work allowed, geographical area served, and term of the type of restricted license; and

(8) Prepare a list giving the names and addresses of all licensed plumbers and registered apprentice plumbers.

(d)(1) The State Board of Health shall prescribe rules and regulations as to the qualifications, examination, and licensing of master plumbers and journeyman plumbers and for the registration of plumbing apprentices.

(2) The State Board of Health shall publish a list giving the names and addresses of all licensed plumbers, registered plumbers, and city plumbing inspectors.

(e) The State Board of Health may issue special licenses and restricted licenses, including, but not limited to, gas licenses and other licenses which may cover a special phase of plumbing, provided that the licensee has demonstrated competency for the particular phase of plumbing for which the person is licensed.

(f) The department shall issue a restricted gas utility license to all gas utilities having gas servicemen. The license shall cover all of the servicemen of the utility if the utility requires each serviceman to be specially trained for this service. The utility shall be responsible to the department for each serviceman and shall provide an identification card showing the utility name, utility license number, and the restricted service of the serviceman. The utility shall register each serviceman and his or her serial number with the Department of Health.

(g) The State Board of Health shall allow the use of a harvested rainwater system used for a nonpotable purpose if the harvested rainwater system:

- (1) Is designed by a professional engineer licensed in Arkansas;
- (2) Is designed with appropriate cross-connection safeguards; and
- (3) Complies with the Arkansas Plumbing Code.

History. Acts 1951, No. 200, § 2; 1975, No. 902, § 2; A.S.A. 1947, § 71-1206; Acts 1987, No. 816, § 2; 1993, No. 638, § 1; 1995, No. 982, § 1; 2003, No. 1217, §§ 5, 6; 2009, No. 361, § 1.

Amendments. The 2009 amendment added (g).

CASE NOTES

Cited: *Lavender v. Rogers*, 232 Ark. 673, 339 S.W.2d 598 (1960).

17-38-202. Committee of Plumbing Examiners.

(a) The State Board of Health shall appoint a Committee of Plumbing Examiners consisting of seven (7) voting members, prescribe their qualifications, and assign their duties. Two (2) of the members shall be master plumbers, one (1) a journeyman plumber, one (1) a professional engineer with special expertise in plumbing design, two (2) shall be consumers, and one (1) a representative of the Department of Health.

(b) The member from the department shall serve on the committee until replaced by the Director of the Department of Health.

(c) The term of office for the remaining members shall be for a staggered term of four (4) years. The board may remove a member for cause.

(d) When so directed, the committee and other employees of the department shall serve the board in an advisory capacity in the formulating of rules and regulations to be adopted by the board.

(e) Those members of the committee who are not employees of the State of Arkansas may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(f) The Director of the Plumbing and Natural Gas Section of the Department of Health shall serve as executive secretary for the committee.

History. Acts 1951, No. 200, § 3; 1975, No. 902, § 3; A.S.A. 1947, § 71-1207; Acts 1987, No. 816, § 3; 1991, No. 330, § 1; 1997, No. 250, § 144.

A.C.R.C. Notes. Acts 1987, No. 816, § 3, provided, in part, that the terms of two members expire two years after appointment by the board and the terms of the remaining two members expire four

years after appointment. However, it is unclear from the act how these terms are to be applied to the six members who are to be appointed in addition to the member from the Department of Health who is to serve until replaced by the State Health Officer [Director of the Department of Health].

17-38-203. Regulation of training.

(a) The State Board of Health shall by regulation prescribe rules and regulations governing plumbing apprentice training committees and, in cooperation with educational authorities, assist in related training programs for plumbers.

(b) Any university, college, or school offering a full-time recognized course in plumbing or any recognized national educational program is exempt from the requirements of subsection (a) of this section, provided that the educational program meets or exceeds the national plumbing apprenticeship requirements.

History. Acts 1951, No. 200, § 3; 1975, No. 902, § 3; A.S.A. 1947, § 71-1207.

17-38-204. Local regulatory authority — Exceptions.

(a) Any city, town, or county having a system of either water, sewerage, or gas utility, or a combination of utilities, by ordinance, rules, regulations, or customer contract shall prescribe rules and regulations governing the regulations of plumbing not in conflict and equal to or exceeding the minimum standards prescribed by the Department of Health.

(b) No plumbing installation shall be installed in any building within this state except in accordance with or exceeding the minimum requirements of the department.

(c) No plumbing installation shall be started without the prescribed licenses, permits, and acceptable review of plans and specifications when required.

(d) Any city, town, sewerage district, water district, sewer association, water association, utility gas system, or county having a system of either water, sewerage, or gas utility, or a combination of utilities, shall set up a system of permits and inspections to assure that the public health and safety is protected.

(e) Reasonable fees for inspections may be charged.

(f) Nothing in this chapter shall prohibit any city, town, or county from having full authority to provide full supervision of the inspection of plumbing and plumbers by enactment of ordinances or regulations by the legal local government body.

(g) However, when a system of either water, sewerage, or gas has been or will be established which has not provided for a local board or

inspector to supervise plumbing or gas, the department may take immediate charge and entire control of the plumbing inspection program. The State Board of Health shall prescribe full regulations including permits, permit fees, and inspections.

(h) When the plumbing control program of any county, city, town, water district, water association, sewerage district, sewer association, or water, sewer, or gas utility fails to provide a program at least equal to the minimum requirements of the department, the department shall take measures to assure that the minimum state requirements are met to protect the public health and safety of the county, city, town, water district, water association, sewerage district, or water, sewer, or gas utility.

History. Acts 1951, No. 200, §§ 4, 5; 1975, No. 902, §§ 4, 5; A.S.A. 1947, §§ 71-1208, 71-1209; Acts 1987, No. 816, §§ 4, 5.

CASE NOTES

Ordinance.

Cities, in certain instances, have the authority to regulate some features relating to public buildings. Where the ordinance is not before the reviewing court, the court cannot make a sweeping finding

that the municipality cannot regulate in any manner, any phase, aspect, or feature relating to the construction of a public school building. *Lavender v. Rogers*, 232 Ark. 673, 339 S.W.2d 598 (1960).

17-38-205. Disposition of funds — Loans.

(a) All fees or payments of any type collected by the State Board of Health under this chapter shall be deposited into the State Treasury on or before the fifth day of the month next following the month of collection thereof, and the Treasurer of State shall credit the fees or deposits to the credit of the "Plumbers Licensing Fund", which is hereby created.

(b) All funds deposited into the Plumbers Licensing Fund shall be used for the maintenance, operation, and improvement of the plumbers licensing and inspection services of the board.

(c) The Chief Fiscal Officer of the State is authorized, from time to time, to make transfers of moneys in the Budget Stabilization Trust Fund as loans to the Plumbers Licensing Fund to be used for maintenance and operation of the plumbers licensing and plumbing inspection program of the Department of Health. Any moneys loaned from the Budget Stabilization Trust Fund to the Plumbers Licensing Fund shall be repaid from fees derived from the plumbers licensing and plumbing inspection program on or before the last day of the fiscal year in which the loan of the funds is made.

(d) All moneys received from the sale or trade of motor vehicles purchased with funds from the Plumbers Licensing Fund shall be credited to the Plumbers Licensing Fund.

History. Acts 1951, No. 200, § 13; 1217; Acts 1987, No. 816, § 12; 1991, No. 1957, No. 372, § 1; A.S.A. 1947, § 71- 330, § 2.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-38-301. License required.
- 17-38-302. Exemptions.
- 17-38-303. Temporary permits.
- 17-38-304. Master plumber or journeyman plumber — Application.
- 17-38-305. Fees.
- 17-38-306. Examinations.

SECTION.

- 17-38-307. Notice of address change.
- 17-38-308. Expiration and renewal.
- 17-38-309. Grounds for suspension or revocation.
- 17-38-310. Procedure for suspension or revocation.
- 17-38-311. Restricted lifetime master plumber license.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1963, No. 555, § 4: July 1, 1963.

Acts 1975, No. 902, § 11: Apr. 7, 1975. Emergency clause provided: “The Legislature hereby finds that the public has been and will be injured through improper plumbing and improper construction of sewage and drain pipes and improper installation of natural gas and that this act is necessary for the public health and safety; and an emergency is hereby declared to exist and this act shall be in full

force and effect from and after its passage and approval.”

Acts 1987, No. 816, § 14: Apr. 8, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present law on plumber licensure is antiquated; that this Act is designed to update such law to provide protection to citizens of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

17-38-301. License required.

(a)(1) No person shall engage in work as a master plumber, journeyman plumber, apprentice plumber, or restricted license holder called for under this chapter or adopted regulations unless first licensed or registered to do so by the Department of Health.

(2) No person other than a licensed master plumber shall use or display the title “master plumber” or append his or her name to or in connection with such a title or any other title or words that represent or may tend to represent him or her as a licensed master plumber.

(b)(1) In any city or town or in any sewerage district, water district, water association, sewer association, or utility gas system, no person, firm, or corporation shall install plumbing unless a licensed master or restricted licensed plumber who shall be responsible for proper installation is in charge at all times.

(2)(A) No license shall be transferable.

(B) It shall be unlawful for any licensed plumber to allow the use of his or her license, directly or indirectly, for the purpose of obtaining local permits for others.

(C) He or she shall not allow the use of his or her license by others to install plumbing work.

(c)(1) No person shall act as a plumbing inspector in this state without first obtaining a certificate of competency as a plumbing inspector, which shall be issued by the department.

(2) The department may issue special certification for special phases of plumbing and may issue an inspector-in-training certificate to duly appointed plumbing inspectors.

History. Acts 1951, No. 200, §§ 6, 10; 1210, 71-1214; Acts 1987, No. 816, § 6; 1975, No. 902, § 6; A.S.A. 1947, §§ 71- 2003, No. 1217, § 7.

17-38-302. Exemptions.

The licensing provisions of this chapter shall not apply to:

(1) Plumbing work done by a property owner in a building owned and occupied by him or her as his or her home except when the license is required by local ordinance;

(2) Work done on buildings whose primary use is agricultural and located outside the incorporated limits of any city or town unless the buildings are connected to a public water system, sewerage system, or natural gas utility system;

(3) Minor repairs consisting of repairing minor working parts of plumbing, fixtures, or the removal of stoppages;

(4) An individual certifying or repairing backflow devices within the scope of a plumbing system if the individual holds a certificate of competency from the Plumbing and Natural Gas Section of the Department of Health; or

(5) The construction, installation, maintenance, repair, renovation, or removal of a storm sewer system not connected to a sanitary sewer system.

History. Acts 1951, No. 200, § 12; 1963, No. 555, § 2; 1975, No. 902, § 10; A.S.A. 1947, § 71-1216; Acts 1987, No. 816, § 11; 2003, No. 679, § 1; 2003, No. 1217, § 8.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), the amendment of this section by Acts 2003, No. 1217, § 8, supersedes the amendment of this section by Acts 2003,

No. 679, § 1. Acts 2003, No. 679, § 1, added a new subdivision that read as follows: “(3) Individuals certifying or repairing backflow devices within the scope of a plumbing system, if the individuals hold a certificate of competency from the Department of Health, Committee of Plumbing Examiners.”

17-38-303. Temporary permits.

The Committee of Plumbing Examiners of the State Board of Health may issue temporary revocable permits to master plumber and journeyman plumber license applicants pending examination. The State Board of Health shall make rules and prescribe procedures governing the issuance of the permits.

History. Acts 1951, No. 200, § 3; 1975, No. 902, § 3; A.S.A. 1947, § 71-1207; Acts 1987, No. 816, § 3; 2003, No. 1217, § 9.

17-38-304. Master plumber or journeyman plumber — Application.

(a) Application for a master plumber or journeyman plumber examination, temporary permit, or license shall be made to the Department of Health with fees.

(b) No license or permit shall be transferable.

(c) Unless the applicant is entitled to a renewal of license, a license shall be issued only after the applicant passes a satisfactory examination showing fitness.

(d)(1) An applicant for the master plumber examination shall have a minimum of five (5) years of plumbing experience.

(2) An applicant for the journeyman plumber examination shall have a minimum of four (4) years of plumbing experience.

(e) The Committee of Plumbing Examiners of the State Board of Health shall approve an applicant for master plumber or journeyman plumber examination provided that the applicant is currently licensed as a master plumber or journeyman plumber in another state or political subdivision of that state whose plumbing laws and codes are similar to those of this state.

(f) The committee may approve an applicant for examination who is not currently licensed in another state or its political subdivision or who has no plumber licensing background, provided the applicant shows proof of experience as a plumber in accordance with subsection (d) of this section. The proof of experience may be in the form of records, affidavits, or bona fide evidence from licensing agencies, former employers, or persons who can attest to the applicant's work background as a plumber.

(g) The committee may consider applicants for the master plumber examination who are registered professional engineers with special expertise in plumbing engineering.

(h) An individual applying for and obtaining a license as a journeyman plumber shall be eligible for the master plumber examination after being licensed as journeyman plumber for one (1) year. In cases of extreme hardship, the committee may waive the one-year requirement in whole or in part.

(i) The committee shall consider an apprentice plumber for the journeyman plumber examination, provided the apprentice plumber has successfully completed the training as defined under the plumber apprenticeship regulations.

History. Acts 1951, No. 200, § 7; 1975, 1987, No. 816, § 7; 1991, No. 330, § 3; No. 902, § 7; A.S.A. 1947, § 71-1211; Acts 2001, No. 1293, § 1.

17-38-305. Fees.

By regulation and after public hearings, the State Board of Health may set reasonable license or examination fees for all licenses called for under this chapter, including, but not limited to, master plumber licenses, journeyman plumber licenses, apprentice plumber registration, gas utility licenses, and restricted plumber licenses.

History. Acts 1951, No. 200, § 8; 1963, No. 555, § 1; 1975, No. 902, § 8; A.S.A. 1947, § 71-1212; Acts 1987, No. 816, § 8.

17-38-306. Examinations.

Regular examinations shall be held at least two (2) times a year, and special examinations may be held at such time and place as may be fixed by the Department of Health.

History. Acts 1951, No. 200, § 7; 1975, No. 902, § 7; A.S.A. 1947, § 71-1211; Acts 1987, No. 816, § 7.

17-38-307. Notice of address change.

Every holder of a license shall promptly notify the State Board of Health of any change of his or her business address.

History. Acts 1951, No. 200, § 10; A.S.A. 1947, § 71-1214.

17-38-308. Expiration and renewal.

(a) All licenses shall be renewed annually within thirty (30) days after the expiration date of the license. The Department of Health may renew a license after the thirty-day period if there is sufficient reason for not renewing the license in the time specified and after payment of penalties as prescribed by regulation.

(b) The department may set a system of staggered expiration dates for all licenses issued by the department.

(c) The department may issue permits for less than one (1) year. The cost of such permits shall be determined based upon the number of months the permit is valid divided by twelve (12) months multiplied by the amount of the annual permit fee.

History. Acts 1951, No. 200, § 8; 1963, 1947, § 71-1212; Acts 1987, No. 816, § 8; No. 555, § 1; 1975, No. 902, § 8; A.S.A. 1991, No. 330, § 4.

17-38-309. Grounds for suspension or revocation.

The Committee of Plumbing Examiners of the State Board of Health, on its own motion, may make investigations and conduct hearings and, on its own motion or upon complaint in writing signed and verified by the complainant and upon not less than ten (10) days' notice to the

licensee, may suspend any plumber’s license or temporary permit if the committee has reason to believe, and may revoke the license or permit in the manner provided in § 17-38-310 if it finds, that the holder of the license or permit has:

- (1) Made a material misstatement in the application for license or renewal thereof or for temporary permit;
- (2) Demonstrated incompetency to act as a license holder; or
- (3) Has willfully violated any provisions of this chapter or any rule, regulation, or order prescribed by the State Board of Health.

History. Acts 1951, No. 200, § 9; A.S.A. 1947, § 71-1213; Acts 1987, No. 816, § 9. **Publisher’s Notes.** This section may be affected by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Administrative License Revocation in Arkansas, 14 Ark. L. Rev. 139.

17-38-310. Procedure for suspension or revocation.

- (a) Suspensions, revocations, civil penalties, and all other such actions regarding licensure, registration, permitting, certification, or apprenticeship, and all appeals to the State Board of Health taken from such actions shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (b) Any member of the Committee of Plumbing Examiners of the State Board of Health, a representative designated by the committee, any member of the board, or a representative designated by the board shall have the authority to administer oaths for the taking of testimony.
- (c) One (1) year after the date of revocation, an application may be made for a new license.

History. Acts 1951, No. 200, § 9; A.S.A. 1947, § 71-1213; Acts 1987, No. 816, § 9; 1995, No. 788, § 2.

17-38-311. Restricted lifetime master plumber license.

- (a) Upon reaching the age of sixty-five (65) or any time thereafter, any person who has been a licensed master plumber licensed by the Department of Health for not fewer than twelve (12) years may apply for a restricted lifetime master plumber license. This license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the department.
- (b) The department shall promulgate rules and regulations necessary to carry out the provisions of this section.

History. Acts 1991, No. 330, § 5.

SUBCHAPTER 4 — APPRENTICE PLUMBER PROGRAM**SECTION.**

- 17-38-401. Definitions.
17-38-402. Powers of State Board of Career Education.
17-38-403. State Apprenticeship Committee.
17-38-404. Hardship status — Criteria and applications.

SECTION.

- 17-38-405. Hardship status — Appeals.
17-38-406. [Repealed.]
17-38-407. Fees for correspondence courses.
17-38-408. Disposition of fees and payments — Uses of funds.

A.C.R.C. Notes. References to “this chapter” in the text of subchapters 1-3, may not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup

act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-38-401. Definitions.

As used in this subchapter:

- (1) “Apprentice plumber” means any person other than a journeyman plumber or master plumber who is engaged in learning and assisting in the installation of plumbing and drainage and enrolled in a state-approved apprentice program;
- (2) “Board” means the State Board of Career Education; and
- (3) “Department” means the Department of Career Education.

History. Acts 1987, No. 768, § 1; 1991, No. 412, § 1.

17-38-402. Powers of State Board of Career Education.

The State Board of Career Education shall have the following powers:

- (1) To ensure that all persons working as apprentice plumbers are properly registered;
- (2) To adopt rules and regulations as to the qualifications, training, and supervision of apprentice plumbers subject to the approval of the Department of Health;
- (3) To adopt rules and regulations establishing the roles and duties of the following organizations or officials in the plumbing apprentice-

ship program in compliance with the National Plumbing Standards as approved and registered with the United States Department of Labor, Bureau of Apprenticeship and Training:

- (A) The Department of Career Education;
 - (B) The State Apprenticeship Committee; and
 - (C) The local apprenticeship committee; and
- (4) To review and approve a correspondence course for apprentice plumbers in hardship cases, provided that:

(A) The department will maintain the responsibility for a correspondence course. However, the department shall delegate the administration of the correspondence course to the Department of Career Education;

(B) The correspondence course material shall be developed by the Department of Education, subject to the approval of the State Apprenticeship Committee and the Department of Health, and made available and to be implemented by the local apprenticeship committee; and

(C) The apprentice is tested for adequate progress no fewer than four (4) times a year.

History. Acts 1987, No. 768, § 2; 1991, No. 412, § 2.

17-38-403. State Apprenticeship Committee.

(a) The State Board of Career Education shall appoint a State Apprenticeship Committee consisting of seven (7) voting members as follows:

- (1) Two (2) shall be Arkansas state-licensed journeyman plumbers;
- (2) One (1) shall be a citizen member; and
- (3) Four (4) shall be Arkansas state-licensed master plumbers.

(b)(1) One (1) of the voting members shall be appointed from each congressional district, and three (3) of the voting members shall be appointed from the state at large.

(2) At least three (3) of the six (6) journeyman plumber and master plumber members must be members of existing functioning local apprenticeship committees.

(c) The Director of the Department of Career Education or his or her designee shall serve as a nonvoting advisory member to the committee.

(d) Voting members shall serve four-year terms.

(e) The members of the committee may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) The board shall prescribe committee members' qualifications and prescribe their duties.

(g) The board may remove a member for cause.

History. Acts 1987, No. 768, § 3; 1991, No. 412, § 3; 1997, No. 250, § 145; 2003, No. 1217, § 10.

A.C.R.C. Notes. Acts 1987, No. 768,

§ 3, provided, in part, that the State Board of Health shall, within 90 days from July 20, 1987, appoint the State Apprenticeship Committee, and that initial ap-

pointments to the committee shall be made so that one member serves a one-year term, two members serve a two-year

term, two members serve a three-year term, and two members serve a four-year term.

17-38-404. Hardship status — Criteria and applications.

(a)(1) The local apprenticeship committee shall establish criteria for eligibility for hardship status. The applicant for hardship status must reside at least thirty (30) miles by the most direct route from the nearest established apprenticeship school.

(2) The thirty-mile criterion is a minimum qualification to be considered as hardship, and complete qualifications will be established by the local apprenticeship committee or the State Apprenticeship Committee.

(b) If the local apprenticeship committee does not act on the application within forty-five (45) days of the date it was filed, the application shall be automatically transmitted to the State Apprenticeship Committee, which shall act on the application at its next regularly scheduled meeting after receipt thereof.

(c) If the State Apprenticeship Committee fails to act, the application shall be automatically transmitted to the State Board of Career Education, which shall act on the application within forty-five (45) days after receipt.

History. Acts 1987, No. 768, § 3; 1991, No. 412, § 4.

17-38-405. Hardship status — Appeals.

(a) The decision of the local apprenticeship committee regarding the hardship application may be appealed to the State Apprenticeship Committee, and the State Apprenticeship Committee shall act on the appeal at its next regularly scheduled meeting upon receipt of the appeal.

(b) The decision of the State Apprenticeship Committee may be appealed to the State Board of Career Education. The board shall act on the appeal within forty-five (45) days of receipt.

(c) All actions of the State Apprenticeship Committee may be appealed to the board in accordance with the board's established policies.

History. Acts 1987, No. 768, § 3; 1991, No. 412, § 5.

17-38-406. [Repealed.]

Publisher's Notes. This section, concerning the duties of the Department of Education, was repealed by Acts 1991, No.

412, § 6. The section was derived from Acts 1987, No. 768, § 4.

17-38-407. Fees for correspondence courses.

The Department of Career Education is authorized to charge reasonable fees to those persons approved for correspondence courses for the costs of development, procurement, administration, and material associated with the correspondence course.

History. Acts 1987, No. 768, § 4.

17-38-408. Disposition of fees and payments — Uses of funds.

(a) All fees or payments of any type collected by the Department of Career Education under this subchapter shall be deposited into the State Treasury on or before the fifth day of the month next following the month of collection of the fees or payments. The Treasurer of State shall credit the fees or payments to the credit of the Apprentice Plumbers Training Fund which is hereby created on the books of the Treasurer of State.

(b) All funds deposited into the Apprentice Plumbers Training Fund shall be used for the maintenance, operation, and improvement of the apprentice plumbers training program administered by the department.

History. Acts 1987, No. 768, § 5; 1991, No. 412, § 7.

CHAPTER 39

POLYGRAPH EXAMINERS AND VOICE STRESS ANALYSIS EXAMINERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. LICENSING.
3. VOICE STRESS ANALYSIS EXAMINERS.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 and 2, may not apply to subchapter 3 which was enacted subsequently.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-32-101 et seq.

Effective Dates. Acts 1967, No. 413, § 27: Mar. 16, 1967. Emergency clause provided: “It is hereby found and determined by the General Assembly that this state has no law licensing and regulating

the use of polygraph examination techniques and instruments, that untrained and unqualified examiners cause great harm to the general public, and that this act is immediately necessary in order to avoid this undesirable situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect upon its passage and approval.”

RESEARCH REFERENCES

ALR. Employee's action in tort against party administering polygraph, drug, or similar test at request of actual or prospective employer. 89 A.L.R.4th 527.

Ark. L. Rev. Privacy: The Polygraph in Employment, 30 Ark. L. Rev. 35.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

17-39-101. Title.
17-39-102. Definitions.
17-39-103. Penalties.
17-39-104. Injunction.
17-39-105. Evidence.

SECTION.

17-39-106. Board — Powers and duties.
17-39-107. Disposition of funds.
17-39-108. Registration.
17-39-109. Instrumentation.

Cross References. Law Enforcement Training Academy, § 12-9-201 et seq.
Psychological stress evaluation test, use

by law enforcement agencies, § 12-12-701 et seq.

17-39-101. Title.

This chapter shall be known and may be cited as the “Polygraph Examiners Act”.

History. Acts 1967, No. 413, § 1; A.S.A. 1947, § 71-2201.

17-39-102. Definitions.

As used in this chapter:

(1) “Board” means the Arkansas Board of Private Investigators and Private Security Agencies created by § 17-40-201;

(2) “Internship” means the study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the board at the commencement of the internship;

(3) “Person” means any natural person, firm, association, copartnership, or corporation;

(4) “Polygraph examiner” means any person who uses any device or instrument to test or question individuals for the purpose of verifying truth of statements; and

(5) “Secretary” means that member of the board selected by the board to act as secretary.

History. Acts 1967, No. 413, § 2; 1977, No. 910, § 1; A.S.A. 1947, § 71-2202.

17-39-103. Penalties.

Any person who violates any provision of this chapter or any person who falsely states or represents that he or she has been or is a polygraph examiner or trainee shall be guilty of a misdemeanor. Upon conviction, that person shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a term of not to exceed six (6) months, or both.

History. Acts 1967, No. 413, § 25; A.S.A. 1947, § 71-2224.

17-39-104. Injunction.

(a) If any person violates any provisions of this chapter, the Secretary of the Arkansas Board of Private Investigators and Private Security Agencies, upon direction of a majority of the Arkansas Board of Private Investigators and Private Security Agencies and in the name of the State of Arkansas, through the Attorney General, shall apply in any circuit court of competent jurisdiction for an order enjoining the violation or for an order enforcing compliance with this chapter.

(b) Upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise that the person has violated this chapter, may issue a temporary injunction, without notice or bond, enjoining the continued violation. If it is established that the person has violated or is violating this chapter, the court or any judge thereof may enter a decree perpetually enjoining the violation or enforcing compliance with this chapter.

(c) In case of violation of any order or decree issued under the provisions of this section, the court or any judge thereof may try and punish the offender for contempt of court.

(d) Proceeding under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this chapter.

History. Acts 1967, No. 413, § 24; A.S.A. 1947, § 71-2223.

17-39-105. Evidence.

Nothing in this chapter shall be construed as permitting the results of truth examinations or polygraph examinations to be introduced or admitted as evidence in a court of criminal law.

History. Acts 1967, No. 413, § 26; A.S.A. 1947, § 71-2225.

CASE NOTES

Cited: Nash v. State, 248 Ark. 323, 451 S.W.2d 869 (1970); Underwood v. Colonial Penn Ins. Co., 888 F.2d 588 (8th Cir. 1989).

17-39-106. Board — Powers and duties.

(a) The Arkansas Board of Private Investigators and Private Security Agencies is authorized and empowered to perform and carry out the functions and duties enumerated in this chapter with respect to the licensing of polygraph examiners and to do and perform all other acts incidental and necessary to the proper performance of the functions and duties as prescribed in this chapter.

(b) The board shall issue regulations consistent with the provisions of this chapter for the administration and enforcement of this chapter and shall prescribe forms which shall be issued in connection therewith.

(c) An order or a certified copy thereof, over the board seal and purporting to be signed by the board members, shall be prima facie proof that the signatures are the genuine signatures of the board members and that the board members are fully qualified to act.

History. Acts 1967, No. 413, §§ 4, 5; 1977, No. 910, § 2; A.S.A. 1947, §§ 71-2204, 71-2205.

17-39-107. Disposition of funds.

(a) All fees collected under the provisions of this chapter shall be paid to the Treasurer of State.

(b) Funds necessary for the enforcement of this chapter and the administration of its provisions shall be appropriated by the General Assembly. However, the funds so appropriated for a biennium shall not exceed the total amount of the fees which it is anticipated will be collected hereunder during that biennium.

History. Acts 1967, No. 413, § 5; A.S.A. 1947, § 71-2205.

17-39-108. Registration.

Each polygraph examiner shall register with the circuit clerk in the county wherein he or she maintains a business address. The circuit clerk of each county shall maintain a list of all polygraph examiners registered in his or her county.

History. Acts 1967, No. 413, § 20; A.S.A. 1947, § 71-2219.

17-39-109. Instrumentation.

- (a) Every polygraph examiner shall use an instrument which records visually, permanently, and simultaneously:
 - (1) A subject’s cardiovascular pattern; and
 - (2) A subject’s respiratory pattern.
- (b) Patterns of other physiological changes in addition to those described in this section may also be recorded.

History. Acts 1967, No. 413, § 3; A.S.A. 1947, § 71-2203.

SUBCHAPTER 2 — LICENSING

- SECTION.
- 17-39-201. License required.
 - 17-39-202. Qualifications.
 - 17-39-203. Original application.
 - 17-39-204. Nonresident applicants.
 - 17-39-205. Reciprocity.
 - 17-39-206. Internship license.
 - 17-39-207. Examination — Fees.
 - 17-39-208. Display of license and signature.
 - 17-39-209. Notification of address change.

- SECTION.
- 17-39-210. Expiration and renewal.
 - 17-39-211. Refusal, suspension, revocation — Grounds.
 - 17-39-212. Employer unaffected by employee violation.
 - 17-39-213. Refusal, suspension, revocation — Proceedings.
 - 17-39-214. Refusal, suspension, revocation — Appeal.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

17-39-201. License required.

- (a) It shall be unlawful for any person, including a city, county, or state employee, to administer polygraph examinations or attempt to hold himself or herself out as a polygraph examiner without a license approved and issued by the Arkansas Board of Private Investigators and Private Security Agencies.
- (b) No action or counterclaim shall be maintained by any person in any court in this state with respect to any agreement or service for which a license is required by this chapter, or to recover the agreed price or any compensation under the agreement, or for the services for which a license is required by this chapter without alleging and proving that the person had a valid license at the time of making the agreement or performing the services.

History. Acts 1967, No. 413, §§ 6, 17; A.S.A. 1947, §§ 71-2206, 71-2216.

CASE NOTES

Police Employee.

State police employee who conducted polygraph tests on defendant and victim was not a qualified polygraph examiner within terms of stipulation as to admis-

sion of examination results since he was not licensed by the state pursuant to this chapter. *Holcomb v. State*, 268 Ark. 138, 594 S.W.2d 22 (1980).

17-39-202. Qualifications.

(a) A person is qualified to receive a license as an examiner who:

(1) Is at least twenty-one (21) years of age;

(2) Establishes that he or she is a person of honesty, truthfulness, integrity, and moral fitness;

(3) Has not been convicted of a felony or a misdemeanor involving moral turpitude;

(4) Holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers or, in lieu thereof, has five (5) consecutive years of active investigative experience immediately preceding his or her application;

(5) Is a graduate of a polygraph examiners course approved by the Arkansas Board of Private Investigators and Private Security Agencies and has satisfactorily completed not less than six (6) months of internship training. Provided, that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than twelve (12) months of internship training may satisfy this subdivision (a)(5); and

(6) Has passed an examination conducted by the board or under its supervision to determine his or her competency to obtain a license to practice as an examiner.

(b) Prior to the issuance of a license, the applicant must furnish evidence of a surety bond or insurance policy to the board. The surety bond or insurance policy shall be in the sum of one thousand dollars (\$1,000). The bond shall be conditioned that the obligor therein will pay to the extent of the face amount of the surety bond or insurance policy all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him or her in the course of his or her examinations.

History. Acts 1967, No. 413, § 7; A.S.A. 1947, § 71-2207; Acts 1993, No. 1219, § 7.

CASE NOTES

Cited: *Foots v. State*, 258 Ark. 507, 528 S.W.2d 135 (1975).

17-39-203. Original application.

(a) Applications for original licenses shall be made to the Secretary of the Arkansas Board of Private Investigators and Private Security Agencies in writing under oath on forms prescribed by the Arkansas Board of Private Investigators and Private Security Agencies and shall be accompanied by the required fee, which is not refundable.

(b) Any such application shall require the information that in the judgment of the board will enable it to pass on the qualifications of the applicant for a license.

History. Acts 1967, No. 413, § 9; A.S.A. 1947, § 71-2208.

17-39-204. Nonresident applicants.

(a) Each nonresident applicant for an original license or a renewal license shall file with the Arkansas Board of Private Investigators and Private Security Agencies an irrevocable consent that:

(1) Actions against the applicant may be filed in any appropriate court of any county or municipality of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose; and

(2) Process on the action may be served on the applicant by leaving two (2) copies thereof with the Secretary of the Arkansas Board of Private Investigators and Private Security Agencies.

(b) The consent shall stipulate and agree that the service of process shall be taken and held to be valid and binding for all purposes.

(c) The secretary shall immediately send one (1) copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

(d) Nonresident applicants must satisfy the requirements of § 17-39-202.

History. Acts 1967, No. 413, § 10; A.S.A. 1947, § 71-2209.

17-39-205. Reciprocity.

An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license without examination by the Arkansas Board of Private Investigators and Private Security Agencies, in its discretion, upon payment of a fee of sixty dollars (\$60.00) and the production of satisfactory proof that:

(1) The applicant is at least twenty-one (21) years of age;

(2) The applicant is of good moral character;

(3) The requirements for the licensing of polygraph examiners in the particular state or territory of the United States were at the date of the applicant's licensing therein substantially equivalent to the requirements now in force in this state;

(4) The applicant had lawfully engaged in the administration of polygraph examinations under the laws of that state or territory for at least two (2) years prior to his or her application for a license under this chapter;

(5) The other state or territory grants similar reciprocity to license holders of this state; and

(6) The applicant has complied with § 17-39-204.

History. Acts 1967, No. 413, § 11; A.S.A. 1947, § 71-2210; Acts 1993, No. 1219, § 8.

17-39-206. Internship license.

(a) Upon approval by the Arkansas Board of Private Investigators and Private Security Agencies, the Secretary of the Arkansas Board of Private Investigators and Private Security Agencies shall issue an internship license to a trainee, provided that he or she applies for the license and pays the required fee within ten (10) days prior to the commencement of his or her internship. The application shall contain such information as may be required by the board.

(b) An internship license shall be valid for the term of twelve (12) months from the date of issue. It may be extended or renewed for any term not to exceed six (6) months upon good cause shown to the board.

(c) A trainee shall not be entitled to hold an internship license after the expiration of the original twelve-month period and six-month extension, if the extension is granted by the board, until twelve (12) months after the date of expiration of the last internship license held by the trainee.

History. Acts 1967, No. 413, § 12; A.S.A. 1947, § 71-2211.

17-39-207. Examination — Fees.

(a) The fee to be paid by an applicant for an examination to determine his or her fitness to receive a polygraph examiner's license is twenty dollars (\$20.00), which is not to be credited as payment against the license fee.

(b) The fees to be paid for licenses shall be as follows:

(1) For an original polygraph examiner's license, sixty dollars (\$60.00);

(2) For an internship license, thirty dollars (\$30.00);

(3) For the issuance of a duplicate polygraph examiner's license, ten dollars (\$10.00);

(4) For a polygraph examiner's renewal license, twenty-five dollars (\$25.00);

(5) For the extension or renewal of an internship license, twenty-five dollars (\$25.00); and

(6) For a duplicate internship license, ten dollars (\$10.00).

(c) The fees required by this chapter may be paid by the governmental agency employing the examiner.

History. Acts 1967, No. 413, § 13;
A.S.A. 1947, § 71-2212.

17-39-208. Display of license and signature.

(a) A license or duplicate license must be prominently displayed at the place of business of the polygraph examiner or at the place of internship.

(b) Each license shall be signed by the members of the Arkansas Board of Private Investigators and Private Security Agencies and shall be issued under the seal of the board.

History. Acts 1967, No. 413, § 14;
A.S.A. 1947, § 71-2213.

17-39-209. Notification of address change.

(a) Notice in writing shall be given to the Secretary of the Arkansas Board of Private Investigators and Private Security Agencies by the licensed examiner of any change of principal business location within thirty (30) days of the time he or she changes the location.

(b) A change of business location without notification to the secretary shall automatically suspend the license theretofore issued.

History. Acts 1967, No. 413, § 15;
A.S.A. 1947, § 71-2214.

17-39-210. Expiration and renewal.

(a) Each polygraph examiner's license shall be issued for the term of one (1) year and, unless suspended or revoked, shall be renewed annually as prescribed by the Arkansas Board of Private Investigators and Private Security Agencies.

(b) A polygraph examiner whose license has expired may obtain at any time within two (2) years after the expiration thereof a renewal license without examination by making a renewal application therefor and satisfying § 17-39-202(a)(2) and (3).

(c) However, any polygraph examiner whose license expired while he or she was in the federal service on active duty with the armed forces of the United States, or the National Guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service may have his or her license renewed without examination if within two (2) years after termination of such service, training, or education, except under conditions other than honorable, he or she furnishes the board with an affidavit to the effect that he or she has been so engaged and that his or her service, training, or education has been so terminated. Section 17-39-202(a)(2) and (3) must also be satisfied.

History. Acts 1967, No. 413, § 16;
A.S.A. 1947, § 71-2215.

17-39-211. Refusal, suspension, revocation — Grounds.

The Arkansas Board of Private Investigators and Private Security Agencies may refuse to issue or may suspend or revoke a license on any one (1) or more of the following grounds:

- (1) Failure to inform a subject to be examined as to the nature of the examination;
- (2) Failure to inform a subject to be examined that his or her participation in the examination is voluntary;
- (3) Material misstatement in the application for original license or in the application for any renewal license under this chapter;
- (4) Willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes;
- (5) If the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;
- (6) Willful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;
- (7) Demonstration of unworthiness or incompetency to act as a polygraph examiner as defined by this chapter;
- (8) Allowing one's license under this chapter to be used by any unlicensed person in violation of the provisions of this chapter;
- (9) Willfully aiding or abetting another in the violation of this chapter or any regulation or rule issued pursuant to it;
- (10) When the license holder has been adjudged as an habitual drunkard or mental incompetent as provided in the Probate Code;
- (11) Failure within a reasonable time to provide information requested by the Secretary of the Arkansas Board of Private Investigators and Private Security Agencies as the result of a formal complaint to the board which would indicate a violation of this chapter; or
- (12) Failure to inform the subject of the results of the examination if so requested.

History. Acts 1967, No. 413, § 18; referred to in this section, is codified throughout title 28. See "Meaning of 'this A.S.A. 1947, § 71-2217.

Publisher's Notes. The Probate Code, act" note at § 28-1-101.

17-39-212. Employer unaffected by employee violation.

Any unlawful act or violation of any of the provisions of this chapter on the part of any polygraph examiner or trainee shall not be cause for revocation of the license of any one (1) other polygraph examiner for whom the offending polygraph examiner or trainee may have been employed, unless it shall appear to the satisfaction of the Arkansas Board of Private Investigators and Private Security Agencies that the

polygraph examiner-employer has willfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

History. Acts 1967, No. 413, § 19;
A.S.A. 1947, § 71-2218.

17-39-213. Refusal, suspension, revocation — Proceedings.

(a)(1) When there is cause to refuse an application or cause to suspend or revoke the license of any polygraph examiner, the Arkansas Board of Private Investigators and Private Security Agencies, not less than thirty (30) days before refusal, suspension, or revocation action is taken, shall notify the person in writing, in person, or by certified mail at the last address supplied to the board by the person. This notice shall include notification of the impending refusal, suspension, or revocation, the reasons therefor, and of his or her right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the board.

(2) If, within twenty (20) days after the personal service of notice or notice has been deposited into the United States mail, the person has not made a written request to the board for this administrative hearing, then the board is authorized to suspend or revoke the polygraph examiner's license of the person without a hearing.

(3) Upon receipt by the board of the written request within the twenty-day period as set out in subdivision (a)(2) of this section, an opportunity for an administrative hearing shall be afforded as early as is practicable.

(4) In no case shall the hearing be held fewer than ten (10) days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the board by the applicant or licensee.

(5) The administrative hearing in those cases shall be before the board.

(b)(1) The board shall conduct the administrative hearings, and it is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, documents, etc.

(2) On the basis of the evidence submitted at the hearing, the board shall take whatever action it deems necessary in refusing the application or suspending or revoking the license.

(c)(1) Upon the revocation or suspension of any license, the licensee shall immediately surrender the license or licenses to the Secretary of the Arkansas Board of Private Investigators and Private Security Agencies.

(2) Failure of a licensee to do so shall be a violation of this chapter, and upon conviction the licensee shall be subject to the penalties set forth in § 17-39-103.

(3) At any time after the suspension or revocation of any license, the secretary shall restore it to the former licensee upon the written recommendations of the board.

History. Acts 1967, No. 413, §§ 21, 23;
A.S.A. 1947, §§ 71-2220, 71-2222.

17-39-214. Refusal, suspension, revocation — Appeal.

(a) Any person dissatisfied with the action of the Arkansas Board of Private Investigators and Private Security Agencies in refusing his or her application or suspending or revoking his or her license, or any other action of the board, may appeal the action of the board by filing a petition within thirty (30) days thereafter in the circuit court in the county where the person resides or in the Pulaski County Circuit Court.

(b) The court is vested with jurisdiction, and it shall be the duty of the court to set the matter for hearing upon ten (10) days' written notice to the board and the attorney representing the board.

(c) The court in which the petition of appeal is filed shall determine whether or not a cancellation or suspension of a license shall be abated until the hearing shall have been consummated with final judgment thereon or whether any other action of the board should be suspended pending hearing. The court shall enter its order accordingly. The order shall be operative when served upon the board. The court shall provide the attorney representing the board with a copy of the petition and order.

(d) The board shall be represented in such appeals by the prosecuting attorney of the county or the Attorney General, or any of their assistants.

(e) The board shall initially determine all facts, but the court upon appeal shall set aside the determination of the board if the board's determination:

- (1) Is not based upon substantial evidence upon the entire record;
- (2) Is arbitrary or capricious;
- (3) Is in violation of statutory requirements; or
- (4) Was made without affording to the licensee or applicant due process of law.

History. Acts 1967, No. 413, § 22;
A.S.A. 1947, § 71-2221.

SUBCHAPTER 3 — VOICE STRESS ANALYSIS EXAMINERS

SECTION.

- 17-39-301. Definitions.
17-39-302. Examinations not admissible
in criminal proceedings.
17-39-303. License required.
17-39-304. Application for license —
Proof and fee.
17-39-305. Fees.

SECTION.

- 17-39-306. Grounds for refusing to issue,
suspending, or revoking li-
censes.
17-39-307. Information furnished on
equipment.
17-39-308. Conduct of voice stress analy-
sis.

A.C.R.C. Notes. Acts 1987, No. 858, § 9, provided that any person who, on July 20, 1987, is actively engaged in the operation of a voice stress analysis machine and who meets the requirements set forth for an examiner in this act shall, upon application therefor and payment of fees prescribed, be issued a license as a voice stress analysis examiner.

References to "this chapter" in subchapters 1 and 2, may not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 1989, No. 410, § 4: Mar. 8, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provi-

sions of the Arkansas Code requiring the licensure of voice stress analysts went into effect in July of 1987; that persons who were employed as voice stress analysts at that time should be grandfathered in under the law; that this Act provides such grandfather provision; and that this Act should be given effect immediately in order to remedy the inequity as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-39-301. Definitions.

As used in this subchapter:

(1) "Voice stress analysis" means the procedure for analyzing the responses of an individual to a specific set of questions;

(2) "Voice stress analysis examiner" means an individual who has been trained in the operation of a voice stress analysis machine and who maintains a current certificate from a recognized training facility; and

(3) "Voice stress analysis machine" means a device which has the ability to electronically analyze the responses of an individual to a specific set of questions and to record the analysis, both digitally and on a graph.

History. Acts 1987, No. 858, § 1.

17-39-302. Examinations not admissible in criminal proceedings.

Nothing contained in this subchapter shall be construed to permit the results of any voice stress analysis examination to be introduced or admitted as evidence in any criminal proceeding.

History. Acts 1987, No. 858, § 8.

17-39-303. License required.

It is unlawful for any person to engage in conducting a voice stress analysis unless that person has qualified for and obtained a license as a voice stress analysis examiner from the Arkansas Board of Private Investigators and Private Security Agencies.

History. Acts 1987, No. 858, § 2.

17-39-304. Application for license — Proof and fee.

(a) Any person desiring to be licensed as a voice stress analysis examiner shall make application for licensure to the Arkansas Board of Private Investigators and Private Security Agencies and shall submit with the application proof satisfactory to the board that the applicant:

- (1) Is at least twenty-one (21) years of age;
- (2) Is a person of honesty, truthfulness, integrity, and moral fitness;
- (3) Has not been convicted of a felony or a misdemeanor involving moral turpitude;

(4)(A) Holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions or, in lieu thereof, has had five (5) years of investigative experience with a law enforcement agency.

(B) However, any person who was employed as a voice stress analyst on July 1, 1987, shall not be required to meet the requirements of this subdivision (a)(4);

(5) Has completed a course of training offering a certification in the operation of the voice stress analysis machine and submits a copy of the certification with the application; and

(6) Has posted a surety bond or insurance policy in the amount of one thousand dollars (\$1,000) or proof that the individual is covered by a business insurance policy.

(b) Each application shall be accompanied by an examination or qualification fee of twenty dollars (\$20.00), which shall be credited against the license fee of the applicant if the applicant is issued a license.

History. Acts 1987, No. 858, § 3; 1989, No. 410, § 1; 1993, No. 1219, § 9.

17-39-305. Fees.

The Arkansas Board of Private Investigators and Private Security Agencies shall collect the following fees:

- (1) For an examination or qualification, twenty dollars (\$20.00);
- (2) For an original voice stress analysis examiner's license, sixty dollars (\$60.00);
- (3) For the annual renewal of a voice stress analysis examiner's license, twenty-five dollars (\$25.00); and
- (4) For the issuance of a duplicate voice stress analysis examiner's license, ten dollars (\$10.00).

History. Acts 1987, No. 858, §§ 3, 4.

17-39-306. Grounds for refusing to issue, suspending, or revoking licenses.

The Arkansas Board of Private Investigators and Private Security Agencies may refuse to issue or may suspend or revoke a license on any one (1) or more of the following grounds:

(1) For failing to inform a subject to be examined as to the nature of the examination;

(2) For failing to inform a subject to be examined that his or her participation in the examination is voluntary;

(3) Any material misstatement in the application for original license or in the application for any renewal license under this subchapter;

(4) Any willful disregard or violation of this subchapter or of any regulation or rule issued pursuant to this subchapter, including, but not limited to, willfully making a false report concerning an examination for voice stress analysis examination purposes;

(5) If the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;

(6) For making any willful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;

(7) For having demonstrated unworthiness or incompetency to act as a voice stress analysis examiner as defined by § 17-39-301;

(8) For allowing one's license under this subchapter to be used by any unlicensed person in violation of the provisions of this subchapter;

(9) For willfully aiding or abetting another in the violation of this subchapter or any regulation or rule issued pursuant to this subchapter;

(10) Where the license holder has been adjudged an habitual drunkard or mentally incompetent as provided in the Probate Code;

(11) For failing, within a reasonable time, to provide information requested by the Secretary of the Arkansas Board of Private Investigators and Private Security Agencies as the result of a formal complaint to the board which would indicate a violation of this subchapter; or

(12) For failing to inform the subject of the results of the examination if so requested.

History. Acts 1987, No. 858, § 7.

Publisher's Notes. The Probate Code, referred to in this section, is codified throughout Title 28. See Meaning of "this act" at § 28-1-101.

Cross References. Registration, certification, and licensing for criminal offenders, § 17-1-103.

17-39-307. Information furnished on equipment.

In order to ensure that the equipment to be used meets the minimum requirements, each person or entity using or proposing to use a voice stress analysis machine shall furnish to the Arkansas Board of Private Investigators and Private Security Agencies:

(1) The make and model of the machine; and

(2) The serial number of the particular machine.

History. Acts 1987, No. 858, § 5.

17-39-308. Conduct of voice stress analysis.

(a) A voice stress analysis shall be conducted only in person or from a legally recorded conversation.

(b)(1) If the test is to be conducted through an in-person interview, written permission for the test must be obtained from the person to be tested.

(2) If the test is to be conducted from a recorded conversation, the conversation may either be recorded with the individual present or by use of a recorded telephone conversation.

(c)(1) In either event, the examiner shall obtain the permission of the individual to be tested to interview and record the responses of the individual and to analyze the individual responses.

(2) In each case, the individual's verbal permission shall be recorded as a part of the interview.

History. Acts 1987, No. 858, § 6.

CHAPTER 40

PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS BOARD OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES.
3. LICENSE, REGISTRATION, AND COMMISSIONS.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-33-101 et seq.

RESEARCH REFERENCES

ALR. Security guard company's liability for negligent hiring, supervision, retention, or assignment of guard. 44 A.L.R.4th 620.

Actions of security service company's

employee as rendering company liable under contract to protect persons or property. 83 A.L.R.4th 1150.

Am. Jur. 57 Am. Jur. 2d, Occup., § 124.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-40-101. Title.

17-40-102. Definitions.

SECTION.

17-40-103. Exemptions.

17-40-104. Penalties.

SECTION.

17-40-105. Notice of violation.

17-40-106. Exclusive regulation — Authority of political subdivisions.

SECTION.

17-40-107. Introduction of evidence — Effect of violations.

Cross References. Polygraph examiners, § 17-39-101 et seq.

Effective Dates. Acts 1977, No. 429, § 41: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to more efficiently and effectively regulate the business conducted by private investigators and private security agencies because of the rapid growth of this industry; that the licensing procedure for such businesses needs to be strengthened to protect the public; that under Ark. Const. Amend. 7, acts without an emergency clause become effective 90 days after final adjournment of the General Assembly; that it may be necessary to extend the session, as authorized in Ark. Const., Art. 5, § 17, and that an extension of the session might result in this act not becoming effective until after July 1, 1977 unless an emergency is declared; and that it is essential that this act go into effect on July 1, 1977. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1977."

Acts 1981, No. 792, § 22: Apr. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law delineating the duties and authority of the Arkansas Board of Private Investigators and Private Security Agencies does not provide for the most efficient and equitable administration of such law and that this act is immediately necessary to provide for the equitable administration of the Arkansas Private Investigators and Private Security Agencies Act. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after April 1, 1981."

Acts 1983, No. 899, § 14: Mar. 28, 1983. Emergency clause provided: "It is hereby

found and determined by the General Assembly that technical errors exist in some sections of the Private Investigators and Private Security Agencies Act; that such errors should be immediately corrected and that this act is so designed. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 630, § 3: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that employees of telecommunications companies during the normal course of business often perform duties designed to achieve legitimate objectives but which are similar in purpose to duties performed by private investigators and employees of private security agencies. Employees of telecommunications companies were not intended to be regulated by Act 429 of 1977 and should be specifically exempted. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 926, § 18: Mar. 23, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to more efficiently and effectively regulate the business conducted by alarm systems agencies because of the rapid growth of this industry; that the licensing procedure for such businesses needs to be strengthened to protect the public; that under Amendment No. 7 to the Arkansas Constitution, acts without an emergency clause become effective ninety days after final adjournment of the General Assembly; that it may be necessary to extend the session, as authorized in Article 5, Section 17 of the Constitution and that an extension of the session might result in this Act not becoming effective until after July 1,

1989, unless an emergency is declared; and that it is essential that this Act go into effect on July 1, 1989. Therefore, an emergency is hereby declared to exist and this

Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989.”

17-40-101. Title.

This chapter may be cited as the “Private Investigators and Private Security Agencies Act”.

History. Acts 1977, No. 429, § 1; A.S.A. 1947, § 71-2122.

CASE NOTES

Applicability.

This chapter does not impose on security guard agencies the same “high duty of care” required of alcoholic beverage vendors and, therefore, did not support the imposition of liability upon a security guard company for negligence in connec-

tion with an automobile accident caused by a drunk driver after he left a bar at which the security guard company provided security guards. *Tackett v. Merchant’s Sec. Patrol*, 73 Ark. App. 358, 44 S.W.3d 349 (2001).

17-40-102. Definitions.

As used in this chapter:

(1) “Accident reconstruction” means the interpretation of physical evidence in the application of scientific principles to form opinions relative to the events of an accident;

(2) “Administrator” means the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies;

(3) “Alarm systems agent” means any individual employed by an alarm systems company who sells on site, performs a survey of the premises to be protected, or responds to alarm signal devices, burglar alarms, or cameras as described in subdivision (5) or subdivision (27) of this section;

(4) “Alarm systems apprentice” means any individual employed by an alarm systems company who installs, services, or repairs on site as described in subdivision (5) or subdivision (27) of this section that is supervised by an alarm systems technician, a supervisor of technicians, or a manager;

(5) “Alarm systems company” means any person, firm, association, or corporation that for a fee or other valuable consideration installs, services, sells on site, performs a survey of the premises to be protected, monitors, or responds to electrical, electronic, or mechanical alarm signal devices, burglar alarms, television cameras, or still cameras used to manually or automatically signal or detect burglary, fire, breaking or entering, shoplifting, pilferage, theft, hold-up, or other illegal or unauthorized activity;

(6) "Alarm systems monitor" means any individual employed by an alarm systems company who monitors or responds as described in subdivision (5) of this section;

(7) "Alarm systems technician" means any individual employed by an alarm systems company who installs, services, or repairs on site as described in subdivision (5) or subdivision (27) of this section;

(8) "Armored car company" means any person that provides armed security transportation and protection of money, currency, coins, bullion, securities, bonds, jewelry, or other valuables from one (1) place or point to another place or point;

(9) "Board" means the Arkansas Board of Private Investigators and Private Security Agencies;

(10) "Commissioned security officer" means any private security officer to whom a security officer commission has been issued by the board;

(11) "Firearm" means, as defined in Merriam-Webster's New Collegiate Dictionary, a weapon from which a shot is discharged by gunpowder;

(12) "Guard company" means any person engaging in the business of providing or undertaking to provide a private watchman, guard, or street patrol service on a contractual basis for another person and performing any one (1) or more of the following or similar functions:

(A) Prevention of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;

(B) Prevention, observation, or detection of any unauthorized activity on private property;

(C) Control, regulation, or direction of the flow or movements of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of property; or

(D) Protection of individuals from bodily harm;

(13) "Investigations company" means any person who engages in the business or accepts employment to obtain or furnish information with reference to:

(A) Crime or wrongs done or threatened against the United States or any state or territory of the United States;

(B) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

(C) The location, disposition, or recovery of lost or stolen property;

(D) The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to property; or

(E) The securing of evidence to be used before any court, board, officer, or investigating committee;

(14) "License" means a permit granted by the board entitling a person to operate as a security services contractor, an investigations company, or an alarm systems company;

(15) "Licensee" means any person to whom a license is granted under this chapter;

(16) "Manager" means, in the case of a corporation, an officer or supervisor, or, in the case of a partnership, a general or unlimited partner meeting the experience qualifications set forth in § 17-40-306 for managing a security services contractor or an investigations company;

(17) "NBFAA" means the National Burglar and Fire Alarm Association, 7101 Wisconsin Avenue, Suite 901, Bethesda, MD 20814-4805, (301) 907-3208;

(18) "NICET" means the National Institute for Certification in Engineering Technologies, 1420 King Street, Alexandria, VA 22314-2794, (703) 684-2835;

(19) "Person" means an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity;

(20) "Private investigator" means any person who performs one (1) or more services as described in subdivision (13) of this section;

(21) "Private security officer" means any individual employed by a security services contractor or the security department of a private business to perform the duties of a security guard, security watchman, security patrolman, or armored car guard;

(22) "Registrant" means an individual who has filed an application with the board to perform the duties of a private investigator, manager, or branch office manager;

(23) "Registration" means a permit granted by the board to an individual to perform the duties of a private investigator, manager, or branch office manager;

(24) "Security department of a private business" means the security department of any person if the security department has as its general purpose the protection and security of its own property and grounds and if it does not offer or provide security services to any other person;

(25) "Security officer commission" means an authorization granted by the board to an individual employed as a private security officer to carry a firearm;

(26) "Security services contractor" means any guard company or armored car company;

(27) "Single-station alarm systems company" means any person, firm, association, or corporation that for a fee or other valuable consideration installs, services, or sells on site fire, smoke, or heat detectors to be installed in a one-family or two-family dwelling or performs a survey of the premises to be protected if the detectors are single-station installations and not a part of or connected to any other detection device or system;

(28) "Supervisor of technicians" means any individual employed by an alarm systems company who supervises alarm systems technicians or alarm systems apprentices and who may install, service, or repair on site as described in subdivision (5) of this section; and

(29) "Undercover agent" means an individual hired by another individual, partnership, corporation, or other business entity to perform a job for that individual, partnership, corporation, or other business entity and, while performing the job, to act as an undercover agent, an employee, or an independent contractor of a licensee, but supervised by a licensee.

History. Acts 1977, No. 429, § 2; 1979, § 71-2123; Acts 1989, No. 651, § 1; 1989, No. 907, §§ 1-3; 1983, No. 899, §§ 1, 2; No. 926, § 1; 1999, No. 1493, § 1; 2001, 1985, No. 1004, §§ 13-15; A.S.A. 1947, No. 1474, § 1.

17-40-103. Exemptions.

(a) This chapter does not apply to:

(1) A person employed exclusively and regularly by one (1) employer in connection with the affairs of that employer only and where there exists an employer-employee relationship;

(2) An officer or employee of the United States, of this state, or of a political subdivision of either, while the employee or officer is engaged in the performance of official duties;

(3) A person who has part-time or full-time employment as a law enforcement officer and who is certified by the Arkansas Commission on Law Enforcement Standards and Training as a law enforcement officer and receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, or watchman if the person is:

(A)(i) Employed in an employee-employer relationship; or

(ii) Employed on an individual contractual basis; and

(B) Not in the employ of another law enforcement officer;

(4) A person engaged exclusively in the business of obtaining and furnishing information for purposes of credit worthiness or collecting debts or ascertaining the financial responsibility of applicants for property insurance and for indemnity or surety bonds, with respect to persons, firms, and corporations;

(5) Consumer reporting agencies as defined in 15 U.S.C. § 1681 et seq.;

(6) An attorney at law in performing his or her duties or an employee of an attorney at law, only in connection with providing investigative services to the attorney and his or her practice;

(7) Admitted insurers, insurance adjusters, agents, and insurance brokers licensed by the state performing duties in connection with insurance transacted by them;

(8) An officer, employee, or agent of a communications common carrier, as defined in 47 U.S.C. § 153(h), while engaged in the normal course of business of the carrier or protecting the carrier or a user of the services of that carrier from fraudulent, unlawful, or abusive use of services;

(9) A professional engineer registered with the State Board of Registration for Professional Engineers and Land Surveyors engaged in providing investigative services as outlined in this chapter;

(10) A person who or business which sells or manufacturers alarm systems, unless such a person or business performs any service as described in § 17-40-102(5);

(11) Installation, servicing, or responding to fire alarm systems or any alarm device which is installed in a motor vehicle, aircraft, or boat;

(12) Installation of an alarm system on property owned by or leased to the installer;

(13) Installation of fixed fire extinguisher systems by persons licensed by the Arkansas Fire Protection Licensing Board;

(14) Installation of the raceway, conductors, and components of a fire alarm system by an entity holding a valid Arkansas contractor's license, electrical classification, when the systems are furnished by alarm systems companies licensed under this chapter, provided the alarm systems company:

(A) Furnishes a system designed to comply with applicable codes and standards;

(B) Furnishes the installing contractor with wiring diagrams and specifications for the required conductors;

(C) Provides periodic job site inspections of the installation in progress;

(D) Connects and installs the system components;

(E) Tests the completed installation in compliance with NFPA 72, providing the owner's representative and the local fire marshal with test documentation; and

(F) Instructs the system owner's representative and provides operator manuals for the installed system; and

(15) Alarm system agents, alarm system apprentices, and alarm system technicians for class E-S and F-S licenses shall be exempt from the requirements for National Burglar and Fire Alarm Association Level 1 and 2 certification.

(b) Although under the provisions of this chapter the security department of a private business that hires or employs an individual in the capacity of a private security officer to possess a firearm in the course and scope of his or her duties is required to make application for a security officer commission for the individual according to the provisions of this chapter, the security department of a private business shall not be required to make application to the Arkansas Board of Private Investigators and Private Security Agencies for any license under this chapter.

(c) Notwithstanding any other provision of this chapter, employees of a licensee who are employed exclusively as undercover agents shall not be required to register with the Arkansas Board of Private Investigators and Private Security Agencies under this chapter.

History. Acts 1977, No. 429, §§ 3, 38; 1989, No. 651, § 2; 1989, No. 926, § 2; 1979, No. 907, § 4; 1983, No. 899, § 3; 1991, No. 709, § 1; 1999, No. 1493, § 2; 1985, No. 756, § 1; A.S.A. 1947, §§ 71-2014, 71-2159; Acts 1987, No. 630, § 1; 2001, No. 1474, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Evidence, 14 U. Ark. Little Rock L.J. 793.

17-40-104. Penalties.

(a) Any person who violates any provision of this chapter is guilty of a Class A misdemeanor. Any person who violates any provision of this chapter within one (1) year of a previous violation is guilty of a Class D felony.

(b) No person shall threaten, intimidate, or attempt to unlawfully influence any member of the Arkansas Board of Private Investigators and Private Security Agencies created by § 17-40-201 while the board member is engaged in the duties of the board. Violations of this subsection shall constitute Class A misdemeanors.

History. Acts 1977, No. 429, § 33; 1981, No. 792, § 16; 1983, No. 899, § 12; A.S.A. 1947, §§ 71-2154, 71-2161; Acts 1999, No. 1493, § 3.

Cross References. Class A misdemeanor, penalties for violations of, §§ 5-4-201, 5-4-401.

17-40-105. Notice of violation.

No person licensed under this chapter shall be prosecuted for violating this chapter unless the licensee has been notified of the alleged violation within three hundred sixty-five (365) days after the occurrence of the violation.

History. Acts 1983, No. 899, § 11; A.S.A. 1947, § 71-2160.

17-40-106. Exclusive regulation — Authority of political subdivisions.

(a) The regulation of investigation, security, and alarm systems businesses shall be exclusive to the Arkansas Board of Private Investigators and Private Security Agencies.

(b) Licensees and employees of licensees, under the provisions of this chapter, shall not be required to obtain any authorization, permit, franchise, or license from, or pay another fee or franchise tax to, or post bond in any city, county, or other political subdivision of this state to engage in the business or perform any service authorized under this chapter.

(c) However, any city or county shall be permitted to require a business operating within its jurisdiction to register without fee and may adopt an ordinance to require users of alarm systems to obtain revocable permits without fee.

History. Acts 1989, No. 926, § 15.

17-40-107. Introduction of evidence — Effect of violations.

The introduction of evidence in all courts in Arkansas shall not be affected by violations of this chapter.

History. Acts 1991, No. 709, § 2.

SUBCHAPTER 2 — ARKANSAS BOARD OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

SECTION.

- 17-40-201. Creation.
- 17-40-202. Members — Qualifications.
- 17-40-203. Members — Terms — Removal — Vacancies — Compensation.
- 17-40-204. Administrator.

SECTION.

- 17-40-205. Employees.
- 17-40-206. Organization and proceedings.
- 17-40-207. Powers and duties.
- 17-40-208. Training of personnel.
- 17-40-209. Fees — Disposition of funds.

Effective Dates. Acts 1977, No. 429, § 41: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to more efficiently and effectively regulate the business conducted by private investigators and private security agencies because of the rapid growth of this industry; that the licensing procedure for such businesses needs to be strengthened to protect the public; that under Ark. Const. Amend. 7, acts without an emergency clause become effective 90 days after final adjournment of the General Assembly; that it may be necessary to extend the session, as authorized in Ark. Const., Art. 5, § 17, and that an extension of the session might result in this act not becoming effective until after July 1, 1977 unless an emergency is declared; and that it is essential that this act go into effect on July 1, 1977. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1977."

Acts 1981, No. 792, § 22: Apr. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law delineating the duties and authority of the Arkansas Board of Private Investigators and Private Security Agencies does not provide for the most efficient and equitable administration of such law and that this act is

immediately necessary to provide for the equitable administration of the Arkansas Private Investigators and Private Security Agencies Act. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after April 1, 1981."

Acts 1983, No. 537, § 12: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this act are provided; and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1983."

Acts 1983, No. 899, § 14: Mar. 28, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that technical errors exist in some sections of the Private Investigators and

Private Security Agencies Act; that such errors should be immediately corrected and that this act is so designed. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 926, § 18: July 1, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that there is an urgent need to more efficiently and effectively regulate the business conducted by alarm systems agencies because of the rapid growth of this industry; that the licensing procedure for such businesses needs to be strengthened to protect the public; that under Amendment No. 7 to the Arkansas Constitution, acts without an emergency clause become effective ninety days after final adjournment of the General Assembly; that it may be necessary to extend the session, as authorized in Article 5, Section 17 of the Constitution and that an extension of the session might result in this Act not becoming effective until after July 1, 1989, unless an emergency is declared; and that it is essential that this Act go into effect on July 1, 1989. Therefore, an emer-

gency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-40-201. Creation.

The Arkansas Board of Private Investigators and Private Security Agencies is created to carry out the functions and duties conferred on it by this chapter.

History. Acts 1977, No. 429, § 4; A.S.A. 1947, § 71-2125.

17-40-202. Members — Qualifications.

(a) The Arkansas Board of Private Investigators and Private Security Agencies shall be composed of seven (7) members as follows:

(1) One (1) citizen who is not registered under this chapter and who is not employed by the same person as any other member of the board, appointed by the Governor from a list of three (3) names submitted by the Arkansas Sheriffs Association, subject to confirmation by the Senate;

(2) One (1) municipal law enforcement officer or his or her designee, appointed by the Governor from a list of three (3) names submitted by the Arkansas Municipal Police Association, subject to confirmation by the Senate;

(3) One (1) member who is registered under this chapter, who is a Class A or Class D licensee, who has been engaged for a period of five (5) consecutive years as a private investigator, and who is not employed by the same person as any other member of the board, appointed by the Governor, subject to confirmation by the Senate;

(4) One (1) member who is registered under this chapter, who has been employed for a period of five (5) consecutive years by a security services contractor, and who is not employed by the same person as any other member of the board, appointed by the Governor, subject to confirmation by the Senate;

(5) One (1) polygraph examiner who is registered under § 17-39-101 et seq., who has been engaged for a period of five (5) consecutive years as a polygraph examiner, and who is not employed by the same person as any other member of the board, appointed by the Governor, subject to confirmation by the Senate;

(6) One (1) member in business with contract security service responsibilities that does not hold a license under this chapter, appointed by the Governor from a list of three (3) names submitted by the Arkansas Chapter of the American Society of Industrial Security, subject to confirmation by the Senate; and

(7) One (1) member who is registered under this chapter, who has been engaged for a period of five (5) consecutive years in the alarms systems profession, and who is not employed by the same person as any other member of the board, appointed by the Governor, subject to confirmation by the Senate.

(b) The experience qualifications prescribed for membership on the board in subsection (a) of this section shall be satisfied by experience of five (5) years in the particular field as a police officer in the State of Arkansas or in the armed forces of the United States, or both.

History. Acts 1977, No. 429, § 5; 1981, No. 792, § 1; 1983, No. 899, § 4; A.S.A. 1947, § 71-2126.

17-40-203. Members — Terms — Removal — Vacancies — Compensation.

(a) Members of the Arkansas Board of Private Investigators and Private Security Agencies shall serve four-year terms.

(b) No member shall serve two (2) consecutive terms.

(c) Each member, unless removed by the Governor, shall hold office until his or her successor is appointed and qualified.

(d) Any member who fails to attend two (2) or more consecutive meetings of the board without reasonable cause may be removed by the Governor.

(e) The Governor shall fill all vacancies occurring among appointed members of the board, subject to confirmation by the Senate, with appointments for the duration of the unexpired term.

(f) The members of the board shall serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1977, No. 429, §§ 6-8; 1981, No. 792, § 3; A.S.A. 1947, §§ 71-2127 — 71-2129; Acts 1997, No. 250, § 146.

A.C.R.C. Notes. As originally constituted, six of the seven members of the Arkansas Board of Private Investigators and Private Security Agencies served six-year terms which were arranged so that one term expired every year. The 1981 amendments to this section and § 17-40-202 reduced the number of board members to five and provided both that terms of members appointed after April 1, 1986, would be four years and that members of the board serving on March 31, 1981, were to serve the full term for which appointed. The 1983 amendment to § 17-40-202 increased the number of board members to seven.

17-40-204. Administrator.

- (a) The position of Administrator of the Arkansas Board of Private Investigators and Private Security Agencies is created. The Director of the Department of Arkansas State Police, or his or her designated representative, shall serve as the administrator. The administrator shall not be a member of the Arkansas Board of Private Investigators and Private Security Agencies, shall perform such duties as may be prescribed by the board, and shall have no financial or business interests, contingent or otherwise, in any security services contractor or investigating company.
- (b) All legal process and all documents required by law to be served upon or filed with the board shall be served or filed with the administrator at the designated office of the board.
- (c) All official records of the board or affidavits by the administrator as to the content of the records shall be prima facie evidence of all matters required to be kept by the board.

History. Acts 1977, No. 429, § 4; A.S.A. 1947, § 71-2125.

17-40-205. Employees.

The number of employees and the salary of each shall be fixed by the General Assembly.

History. Acts 1977, No. 429, § 8; A.S.A. 1947, § 71-2129.

17-40-206. Organization and proceedings.

(a) The Arkansas Board of Private Investigators and Private Security Agencies shall elect from among its members a chair, vice chair, and secretary to serve one-year terms commencing on January 1 of each year. The chair or, in his or her absence, the vice chair shall preside at all meetings of the board and perform the other duties prescribed in this chapter.

(b) The board shall meet at regular intervals to be decided by a majority vote of the board.

(c) At the first meeting, the board shall specify the date and place of the first examinations for licenses to be held.

(d) A majority of the board constitutes a quorum to transact business.

(e) The board shall adopt a seal, the form of which it shall prescribe.

(f) The board shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1977, No. 429, §§ 9, 12;
A.S.A. 1947, §§ 71-2130, 71-2133.

17-40-207. Powers and duties.

(a) The Arkansas Board of Private Investigators and Private Security Agencies shall have the following powers and duties:

(1) To determine the qualifications of licensees, registrants, and commissioned security officers as provided in this chapter;

(2) To investigate alleged violations of the provisions of this chapter and of any rules and regulations adopted by the board;

(3) To promulgate reasonable rules and regulations in the manner provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(4) To establish and enforce standards governing the safety and conduct of persons licensed, registered, and commissioned under the provisions of this chapter, including authority to adopt a rule to prohibit such persons from using any metallic insignia or identification badge.

(b) In the conduct of any investigation conducted under the provisions of this chapter, the board may issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The officer conducting a hearing may administer oaths and may require testimony or evidence to be given under oath.

History. Acts 1977, No. 429, §§ 9, 10;
1981, No. 792, § 2; A.S.A. 1947, §§ 71-2130, 71-2131.

17-40-208. Training of personnel.

(a) The Arkansas Board of Private Investigators and Private Security Agencies shall establish training programs to be conducted by agencies and institutions approved by the board.

(b) The basic training course approved by the board may include the following:

(1) Legal limitations on the use of firearms and on the powers and authority of the private security officer;

(2) Familiarity with this chapter;

(3) Field note taking and report writing;

(4) Range firing and procedure and handgun safety and maintenance; and

(5) Any other topics of security officer training curriculum which the board deems necessary.

(c) The board shall promulgate all rules necessary to administer the provisions of this section concerning the training requirements of this chapter.

(d) When an individual meets the training requirements approved by the board, that individual shall not be required to be trained over again until the private security officer's or commissioned security officer's renewal training is required, which is two (2) years after the private security officer or commissioned security officer is licensed, regardless of the company by which the private security officer or commissioned security officer is employed or trained.

History. Acts 1977, No. 429, § 36; 1983, No. 899, § 10; A.S.A. 1947, § 71-1979, No. 907, § 20; 1981, No. 792, § 18; 2157; Acts 2005, No. 2237, § 7.

17-40-209. Fees — Disposition of funds.

(a) It is the intent of the General Assembly that the cost of the investigating and licensing of private investigators and private security agencies as authorized by this chapter be borne by the individuals and agencies so licensed.

(b) To assure that such an intent is carried out, the expenditure for personal services and operating expenses associated with the investigating and licensing of agencies and individuals required to be licensed under the provisions of this chapter shall be limited in the aggregate to the amount deposited into the State Treasury to the credit of the Department of Arkansas State Police Fund from license and registration fees of the individuals and agencies.

(c) In order to provide sufficient revenues to carry out the duties and functions prescribed by this chapter, the Arkansas Board of Private Investigators and Private Security Agencies is authorized to levy fees for licenses as authorized by this chapter in such amounts as may be deemed necessary and proper by the board.

(d) A delinquency fee shall be provided by the board.

(e)(1) All funds received by the board shall be deposited into the State Treasury as special revenues to the credit of the fund.

(2) Money remaining at the end of the fiscal year shall not revert to any other fund but shall carry over to the next fiscal year.

History. Acts 1977, No. 429, § 17; 1979, No. 907, § 11; 1981, No. 792, § 9; 1983, No. 537, § 8; A.S.A. 1947, §§ 71-2138, 71-2162; Acts 1989, No. 926, § 3; 1995, No. 430, § 1; 1999, No. 1493, § 4; 2005, No. 2237, § 8.

A.C.R.C. Notes. Acts 2005, No. 2237, § 14, provided: "Since the duration of registrations and commissions under the Pri-

ate Investigators and Private Security Agencies Act, § 17-40-101 et seq., double in length as a result of the act derived from this House Bill 2786 of 2005, the Arkansas Board of Private Investigators and Private Security Agencies may increase the fees in existence on April 1, 2005, for such registrations and commissions without necessity of promulgating

the fee increases under the Arkansas Administrative Procedures Act, § 25-15-201 et seq. The fees increased under the authority of this section shall not exceed for

each fee category the combined fees in a fee category for an initial application and renewal as those fees are in existence on April 1, 2005."

SUBCHAPTER 3 — LICENSE, REGISTRATION, AND COMMISSIONS

SECTION.

- 17-40-301. Unlawful acts.
- 17-40-302 — 17-40-304. [Reserved.]
- 17-40-305. License required.
- 17-40-306. License — Applicant qualifications.
- 17-40-307. License — Application and examination.
- 17-40-308. License — Insurance prerequisite.
- 17-40-309. License — Classifications.
- 17-40-310. License — Form.
- 17-40-311. License — Assignability.
- 17-40-312. License — Termination.
- 17-40-313. License — Expiration and renewal.
- 17-40-314. Licenses — Managers.
- 17-40-315. Duties of licensee.
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- 17-40-317. Licensees — Windup period.
- 17-40-318. Training requirements for alarm system business.
- 17-40-319 — 17-40-324. [Reserved.]
- 17-40-325. Registration required.
- 17-40-326. Registration — Applicant qualifications.
- 17-40-327. Registration — Application.
- 17-40-328. Registration fee.
- 17-40-329. Registration — Issuance of identification card — Transfer and fee — Cancellation.

SECTION.

- 17-40-330 — 17-40-334. [Reserved.]
- 17-40-335. Security officer's commission required.
- 17-40-336. Commission — Geographical scope.
- 17-40-337. Commission — Applicant qualifications.
- 17-40-338. Commission — Armored car company employees.
- 17-40-339. Commission — Processing of applications.
- 17-40-340. Commission — Issuance of identification card.
- 17-40-341. [Repealed.]
- 17-40-342. Commission — Termination.
- 17-40-343. Commission — Expiration.
- 17-40-344. Commission — Suspension or denial.
- 17-40-345 — 17-40-349. [Reserved.]
- 17-40-350. License, registration, or commission — Grounds for disciplinary action.
- 17-40-351. License, registration, or commission — Procedure for denial.
- 17-40-352. License, registration, or commission — Record of denial, revocation, or suspension.
- 17-40-353. Reciprocity.
- 17-40-354. Fingerprint cards.

Effective Dates. Acts 1977, No. 429, § 41: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to more efficiently and effectively regulate the business conducted by private investigators and private security agencies because of the rapid growth of this industry; that the licensing procedure for such businesses needs to be strengthened to protect the public; that under Ark. Const. Amend. 7, acts without an emergency clause become effective 90 days after final adjournment of the General Assembly; that it may be necessary to extend

the session, as authorized in Ark. Const., Art. 5, § 17, and that an extension of the session might result in this act not becoming effective until after July 1, 1977 unless an emergency is declared; and that it is essential that this act go into effect on July 1, 1977. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1977."

Acts 1981, No. 792, § 22: Apr. 1, 1981. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that the present law delineating the duties and authority of the Arkansas Board of Private Investigators and Private Security Agencies does not provide for the most efficient and equitable administration of such law and that this act is immediately necessary to provide for the equitable administration of the Arkansas Private Investigators and Private Security Agencies Act. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after April 1, 1981."

Acts 1983, No. 766, § 3: Mar. 24, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present requirement that all armored car companies carry insurance in the minimum amount of one million dollars regardless of the maximum value of cargo transported at any one time is not reasonable and places an undue financial burden on armored car companies that never carry cargo of that value; that a reduction of the minimum insurance coverage required of such companies poses no risk to users of such services since financial institutions do not permit an armored car company to carry a cargo in excess of its cargo insurance coverage; and that it is the purpose of this act to reduce the minimum insurance required to be carried by such companies and it should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 899, § 14: Mar. 28, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that technical errors exist in some sections of the Private Investigators and Private Security Agencies Act; that such errors should be immediately corrected and that this act is so designed. Therefore, an emergency is hereby declared to exist and this act being necessary for the pres-

ervation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 926, § 18: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to more efficiently and effectively regulate the business conducted by alarm systems agencies because of the rapid growth of this industry; that the licensing procedure for such businesses needs to be strengthened to protect the public; that under Amendment No. 7 to the Arkansas Constitution, acts without an emergency clause become effective ninety days after final adjournment of the General Assembly; that it may be necessary to extend the session, as authorized in Article 5, Section 17 of the Constitution and that an extension of the session might result in this Act not becoming effective until after July 1, 1989, unless an emergency is declared; and that it is essential that this Act go into effect on July 1, 1989. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1991, No. 57, § 5: Feb. 7, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 926 of 1989 amended various sections of the Private Investigators and Private Security Agencies Act, and in so doing misclassified Class F licensees for purposes of determining the amount of public liability insurance they must maintain; that the misclassification will result in undue hardships on Class F licensees; that this Act makes the correction necessitated by Act 926; and that this Act should be given immediate effect in order to make the correction as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-40-301. Unlawful acts.

(a) No licensee or officer, director, partner, manager, or employee of a licensee shall knowingly make any false report to his or her employer or client for whom information was being obtained.

(b) No written report shall be submitted to a client except by the licensee, manager, or a person authorized by one (1) or either of them. The person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in a report are true and correct.

(c) No licensee, or officer, director, partner, manager, or employee of a licensee, except full-time police officers, shall use a title, wear a uniform, use an insignia, use an identification, or make any statement with the intent to give the impression that he or she is connected in any way with the federal government, a state government, county government, city government, or any political subdivision of a state government.

(d) It is unlawful and punishable as provided in § 17-40-104 for any person to represent falsely that he or she is employed by a licensee.

(e) It shall be unlawful and punishable as provided in § 17-40-104 for any state, county, or municipal government, or political subdivision of either, to install, service, maintain, monitor, operate, sell, or lease as lessor any burglar alarm system, fire alarm system, or other electronic security system on private property if a private contractor licensed to do business within the county or municipality offers such systems or services to the public within such a county or municipality. The provisions of this section shall not prohibit a county or municipal government from installing, servicing, maintaining, or operating a burglar alarm system or fire alarm system on any property owned or leased by such a county or municipal government.

(f) No person shall program an automatic dialing device to call any law enforcement agency, fire department, emergency health service, or any state, city, or county agency, without prior approval of the Arkansas Board of Private Investigators and Private Security Agencies.

(g) No licensee shall contract or subcontract with any unlicensed entity that performs a service that is required to be licensed by this chapter.

History. Acts 1977, No. 429, §§ 13, 25; 1979, No. 907, § 15; 1981, No. 792, § 12; 1983, No. 899, § 7; A.S.A. 1947, §§ 71-2134, 71-2146; Acts 1989, No. 926, § 4; 1991, No. 786, § 23; 1999, No. 1493, § 5.

Publisher's Notes. Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular

session of the 78th General Assembly. All such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

17-40-302 — 17-40-304. [Reserved.]**17-40-305. License required.**

It shall be unlawful and punishable as provided in § 17-40-104 for any person to engage in the business of, or perform any service as, a private investigator, security services contractor, or alarm systems company, or to offer his or her services in those capacities or engage in any business or business activity required to be licensed by this chapter unless he or she has obtained a license under the provisions of this chapter.

History. Acts 1977, No. 429, § 13;
1983, No. 899, § 7; A.S.A. 1947, § 71-
2134; Acts 1989, No. 926, § 5.

17-40-306. License — Applicant qualifications.

(a) Unless the requirement is waived by the Arkansas Board of Private Investigators and Private Security Agencies, an applicant for a license or his or her manager must:

- (1) Be at least twenty-one (21) years of age;
- (2) Be a high school graduate or its equivalent if the applicant is a manager of an investigations company or an individual applying for an investigations company license;
- (3) Not have been found guilty of or pleaded guilty or nolo contendere to any:

(A) Felony, Class A misdemeanor, crime involving an act of violence, or any crime involving moral turpitude in any court in the State of Arkansas for which a pardon has not been granted;

(B) Felony, Class A misdemeanor or an offense of a comparable level, crime involving an act of violence, or any crime involving moral turpitude in any court in another state for which a pardon has not been granted; or

(C) Felony, Class A misdemeanor or an offense of a comparable level, crime involving an act of violence, or any crime involving moral turpitude in a military or federal court for which a pardon has not been granted;

(4) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not have been restored;

(5) Not be suffering from habitual drunkenness or from narcotics addiction or dependence;

(6) Not have been discharged from the armed services of the United States under other than honorable conditions;

(7) Be of good moral character; and

(8) Be in compliance with any other reasonable qualifications that the board may fix by rule.

(b)(1) An applicant who applies for a license to engage in the business of an investigations company or his or her manager shall have:

(A) Two (2) consecutive years' experience prior to the date of the application in the investigative field as an agent, employee, manager, or owner of an investigations company;

(B) Been licensed under Acts 1965, No. 447 [repealed];

(C) Two (2) years' experience as a licensed bail bondsman and a baccalaureate degree from a four-year institution of higher education; or

(D) Satisfied such other requirements as may be set by the board.

(2) The experience of the applicant must be reviewed by the board and determined to be adequate to qualify the applicant to engage in the business of an investigations company.

(c) An applicant who applies for a license to engage in the business of a security services contractor or his or her manager shall have two (2) consecutive years' experience prior to the date of application in the security services field as an agent, employee, manager, or owner of a security services contractor company, or the applicant or his or her manager shall have been licensed under Acts 1973, No. 605 [repealed], or shall satisfy such other requirements as may be set by the board.

History. Acts 1977, No. 429, § 14; 1219, § 10; 1995, No. 953, § 1; 2005, No. 1979, No. 907, § 9; 1981, No. 792, § 7; 2237, § 1.
A.S.A. 1947, § 71-2135; Acts 1993, No.

17-40-307. License — Application and examination.

(a) An application for a license under this chapter shall be in the form prescribed by the Arkansas Board of Private Investigators and Private Security Agencies. The application shall include:

(1) The full name and business address of the applicant;

(2) The name under which the applicant intends to do business;

(3) A statement as to the general nature of the business in which the applicant intends to engage;

(4) A statement as to the classification under which the applicant desires to be qualified;

(5) The full name and residence address of each of the applicant's partners, officers, directors, and its manager, if the applicant is an entity other than an individual;

(6) Two (2) recent photographs, of a type prescribed by the board, of the applicant, if the applicant is an individual, or of each officer and of each partner or shareholder who owns a twenty-five percent (25%) or greater interest in the applicant, if the applicant is an entity;

(7) Two (2) classifiable sets of fingerprints of the applicant, if the applicant is an individual, or of each officer and of each partner or shareholder who owns a twenty-five percent (25%) or greater interest in the applicant, if the applicant is an entity;

(8) A verified statement of his or her experience qualifications;

(9) A verified statement disclosing any record of convictions of the applicant of a felony, Class A misdemeanor, a crime involving an act of violence, or any crime involving moral turpitude; and

(10) Such information as may be required by the board which would show that the applicant is honest, trustworthy, and of good character.

(b) An application for a license under this chapter shall include the social security number of the one making the application.

(c) The board may require an applicant or his or her manager to demonstrate qualifications by an examination to be determined by the board or show proof of other qualifications as may be determined by the board.

(d) Payment of the application fee prescribed by this chapter entitles the applicant or his or her manager to one (1) examination without further charge. If the person fails to pass the examination, he or she shall not be eligible for any subsequent examination except upon payment of the reexamination fee which shall be set by the board in an amount not in excess of the renewal fee for the license classification for which license application was originally made.

(e)(1) Each first-time applicant and applicant for license renewal shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) The check shall conform to applicable federal standards and shall include the taking of fingerprints as required in subdivision (a)(7) of this section.

(3) The applicant shall sign a release of information to the board and shall be responsible for the payment of any fee associated with the criminal background check.

(4) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all releasable information obtained concerning the applicant.

History. Acts 1977, No. 429, § 15; 2136; Acts 1999, No. 1493, § 6; 2005, No. 1979, No. 907, § 10; A.S.A. 1947, § 71- 2237, § 2.

17-40-308. License — Insurance prerequisite.

(a) No Class B, Class C, or general license shall be issued to a company under this chapter unless the applicant files with the Arkansas Board of Private Investigators and Private Security Agencies proof of a policy of continuing public liability insurance in a sum not less than five hundred thousand dollars (\$500,000), conditioned to compensate any person for damages, including, but not limited to, bodily injury, caused by wrongful acts of the principal or its servants, officers, agents, and employees in the conduct of any business licensed by this chapter.

(b) No Class B or Class C license shall be issued to an armored car company unless the applicant files with the board proof of a valid and continuing policy of armored car cargo insurance protecting customers'

valuables in a sum not less than five hundred thousand dollars (\$500,000).

(c)(1) All Class E licensees shall maintain in force at all times while licensed a public liability insurance policy, with minimum limits of liability of three hundred thousand dollars (\$300,000). All Class F licensees shall maintain in force at all times while licensed a public liability insurance policy, with minimum limits of liability of one hundred thousand dollars (\$100,000).

(2) All alarm systems businesses which issue Underwriters' Laboratories certificates for local mercantile, central station, or police connected alarms shall maintain in force at all times a public liability insurance policy in an amount of at least three hundred thousand dollars (\$300,000).

(3) Proof of such insurance must be provided to the board upon request.

(4) This section will not pertain to alarm systems businesses that do not sell, install, or service alarm systems.

History. Acts 1977, No. 429, § 32; 926, §§ 7, 8; 1991, No. 57, § 1; 1999, No. 1981, No. 792, § 15; 1983, No. 766, § 1; 1493, § 7.
A.S.A. 1947, § 71-2153; Acts 1989, No.

17-40-309. License — Classifications.

(a) No person may engage in any operation outside the scope of the person's license.

(b) For the purpose of defining the scope of licenses, the following license classifications are established:

(1) Class A: Investigations company license, covering operations as defined in § 17-40-102(13);

(2) Class B: Security services contractor license, covering operations as defined in § 17-40-102(26);

(3) Class C: Covering the operations included within Class A and Class B;

(4) Class D: A single individual operating as an investigations company with no other employees required to be licensed or registered under this chapter;

(5)(A) Class E Level 1: Alarm systems company license, covering operations as defined in § 17-40-102(5). Fire alarm license is restricted to structures for which applicable building and life safety codes do not mandate the installation of fire alarm systems, one-family or two-family dwellings classified as "Group R-3" in the Arkansas Fire Prevention Code.

(B) Class E Level 2: Alarm systems company license covering operations as defined in § 17-40-102(5). Fire alarm license is restricted to structures for which applicable building and life safety codes do not mandate the installation of fire alarm systems, one-family and two-family dwellings classified as "Group R-3"; "Group R-1", except buildings with three (3) or more stories; "Group R-2", except buildings with three (3) or more stories; "Group A", except

those that exceed fifteen thousand square feet (15,000 sq.ft.); "Group B", except "highrise"; "Group E", except those that exceed fifteen thousand square feet (15,000 sq.ft.); "Group F"; "Group M"; and "Group S" in the Arkansas Fire Prevention Code.

(C) Class E Level 3: Alarm systems company license covering operations as defined in § 17-40-102(5). Fire alarm license is unrestricted.

(D) Class E-M: Alarm systems company license covering only monitoring as defined in § 17-40-102(5).

(E) Class E-S: A single-station alarm systems company license covering operations as defined by § 17-40-102(27). Fire alarm license is restricted to one-family and two-family dwellings.

(F) Class F-S: A single-station alarm systems company license covering operations as defined by § 17-40-102(27) with no more than five (5) registered employees required to be registered under this chapter. Fire alarm license is restricted to one-family and two-family dwellings;

(6)(A) Class F: An alarm systems company license covering operations as defined in § 17-40-102(5) with no more than five (5) employees required to be registered under this chapter. Fire alarm license is restricted to structures for which applicable building and life safety codes do not mandate installation of fire alarm systems and one-family and two-family dwellings classified as "Group R-3" in the Arkansas Fire Prevention Code.

(B) Class F-M: Alarm systems company license covering only monitoring as defined in § 17-40-102(5) with no more than five (5) persons required to be registered under this chapter; and

(7) General: Covering the operations included within Class A, Class B, and Class E.

(c) A person licensed only as a security services contractor may not make any investigation except as incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property which the person has been hired or engaged to protect.

History. Acts 1977, No. 429, § 16; 1981, No. 792, § 8; A.S.A. 1947, § 71-2137; Acts 1989, No. 926, § 9; 1999, No. 1493, § 8; 2001, No. 1474, § 2.

Publisher's Notes. As to holders of Class A licenses on April 1, 1981 who were entitled to Class D licenses, see Acts 1981, No. 792, § 20.

17-40-310. License — Form.

A license when issued shall be in the form prescribed by the Arkansas Board of Private Investigators and Private Security Agencies, and shall include:

- (1) The name of the licensee;
- (2) The name under which the licensee is to operate; and
- (3) The number and date of issuance of the license.

History. Acts 1977, No. 429, § 20; A.S.A. 1947, § 71-2141.

17-40-311. License — Assignability.

A license issued under this chapter is not assignable.

History. Acts 1977, No. 429, § 22;
A.S.A. 1947, § 71-2143.

17-40-312. License — Termination.

(a) The Arkansas Board of Private Investigators and Private Security Agencies shall prescribe by rule the procedure under which a license issued under this chapter may be terminated.

(b) The fee for the termination of a license under this chapter shall be established by the board in an amount not to exceed five dollars (\$5.00).

History. Acts 1977, No. 429, § 23;
A.S.A. 1947, § 71-2144.

17-40-313. License — Expiration and renewal.

(a) Licenses issued under this chapter expire one (1) year after the date of issuance if not renewed. To renew an unexpired license, the licensee, on or before the date on which it would otherwise expire, shall apply for renewal on a form prescribed by the Arkansas Board of Private Investigators and Private Security Agencies, and pay the renewal fee prescribed by this chapter. On renewal, a renewal license shall be issued to the licensee.

(b) Renewal of a license shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

(c) A suspended license is subject to expiration and shall be renewed as provided in this chapter. However, renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

(d) It shall be unlawful for a suspended license holder or its employee to operate while the license is suspended.

(e) A license which is not renewed within two (2) years after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

(f) The holder of the license may obtain a new license only on compliance with all of the provisions of this chapter relating to the issuance of an original license.

History. Acts 1977, No. 429, §§ 34, 35,
37; 1981, No. 792, §§ 17, 19; A.S.A. 1947,
§§ 71-2155, 71-2156, 71-2158.

17-40-314. Licenses — Managers.

(a)(1) The business of each licensee, other than in instances in which the licensee company is owned and operated by the same individual who meets the qualifications of a manager, shall be operated under the direction and control of at least one (1) manager.

(2) Licensees in instances in which the licensee company is owned and operated by the same individual who meets the qualifications of a manager shall not be required to obtain a manager's license.

(b) No person shall act as a manager of a licensee until he or she has:

(1) Demonstrated his or her qualifications by a written examination; and

(2) Made a satisfactory showing to the Arkansas Board of Private Investigators and Private Security Agencies that he or she has the qualifications prescribed by § 17-40-306 and that none of the facts stated in § 17-40-350(a) exist as to him or her.

(c) It shall be unlawful and punishable as provided in § 17-40-104 for any individual to make application to the board as manager or to serve as manager of an investigations company, security services contractor, or alarm systems company unless the individual intends to maintain a supervisory position on a daily basis for the investigations company, security services contractor, or alarm systems company.

(d) If the manager, who has qualified as provided in this section, ceases to be manager for any reason whatsoever, the licensee shall notify the board in writing within fourteen (14) days from the cessation. If notice is given, the license shall remain in force for a reasonable length of time to be determined by the rules of the board pending the qualification, as provided in this chapter, of another manager. If the licensee fails to notify the board within the fourteen-day period, his or her license shall be subject to suspension or revocation.

History. Acts 1977, No. 429, §§ 13, 18; A.S.A. 1947, §§ 71-2134, 71-2139; Acts 1981, No. 792, § 10; 1983, No. 899, § 7; 1989, No. 926, § 10.

17-40-315. Duties of licensee.

(a) Each licensee shall maintain a record containing the information relative to his or her employees as may be prescribed by the Arkansas Board of Private Investigators and Private Security Agencies.

(b) At all times a licensee shall be legally responsible for the good conduct in the business of each employee, including his or her manager.

(c) Any licensed entity finding a violation of this chapter shall report the violation to the local authority and to the board.

History. Acts 1977, No. 429, §§ 24, 26; A.S.A. 1947, §§ 71-2145, 71-2147; Acts 1999, No. 1493, § 9.

17-40-316. Licenses — Change of address, name, or officers.

(a) Notification to the Arkansas Board of Private Investigators and Private Security Agencies shall be made within fourteen (14) days after:

(1) The change of address of the principal place of business of a licensee;

(2) The change of address of a branch office; or

(3) The change of a business name under which a licensee does business.

(b) A licensee shall, within fourteen (14) days after the change, notify the board of:

(1) Any and all changes of his or her address;

(2) The change of the name under which he or she does business; and

(3) Any changes in its officers or partners.

History. Acts 1977, No. 429, § 21;
A.S.A. 1947, § 71-2142.

17-40-317. Licensees — Windup period.

When the individual on the basis of whose qualifications a license under this chapter has been obtained ceases to be connected with the licensee for any reason whatsoever, the business may be carried on for a temporary period under such terms and conditions as the Arkansas Board of Private Investigators and Private Security Agencies shall provide by regulation.

History. Acts 1977, No. 429, § 18;
A.S.A. 1947, § 71-2139.

17-40-318. Training requirements for alarm system business.

(a) The licensee or his or her manager of a Class E Level 1 and Class F license shall show proof of National Burglar and Fire Alarm Association Level 2 certification or board-approved equivalent. The licensee or his or her manager for a Class E Level 1 shall have two (2) years from July 30, 1999, to obtain the aforementioned certification. An applicant for a Class E Level 1 and Class F license or his or her manager applicant shall show proof of National Burglar and Fire Alarm Association Level 2 certification or board-approved equivalent before the license may be issued.

(b) The licensee or his or her manager of a Class E Level 2 license shall show proof of National Burglar and Fire Alarm Association Level 2, National Institute for Certification in Engineering Technologies Level II certification or board-approved equivalent. The licensee or his or her manager shall have two (2) years from July 30, 1999, to obtain the aforementioned certification. An applicant for a Class E Level 2 license or his or her manager applicant shall show proof of National Burglar and Fire Alarm Association Level 2 certification, National Institute for Certification in Engineering Technologies Level II certification or board-approved equivalent before the license may be issued.

(c) The licensee or his or her manager of a Class E Level 3 license shall show proof of National Institute for Certification in Engineering Technologies Level III, National Burglar and Fire Alarm Association Level 2 and Practical Fire Alarm Course, or board-approved equivalent. The licensee or his or her manager shall have two (2) years from July 30, 1999, to obtain the aforementioned certification. An applicant for a Class E Level 3 license or his or her manager applicant shall show proof of National Burglar and Fire Alarm Association Level 2 and Practical Fire Alarm Course, National Institute for Certification in Engineering Technologies Level III, or board-approved equivalent before the license may be issued.

(d) All persons applying for a license as an alarm system company or his or her manager applicant shall successfully complete the examination as manager under the provisions of this chapter and the Arkansas Board of Private Investigators and Private Security Agencies' rules and regulations.

(e) All applicants for licensure shall meet other reasonable qualifications as may be adopted by the board.

(f) The licensee or the licensee's manager of a Class E-S or Class F-S license shall demonstrate that he or she is knowledgeable in fire protection and the proper use and placement of single-station fire and heat detectors by satisfactorily completing an examination to be approved by the board on the single-station portion of the Household Fire Warning Protection provision of the National Fire Protection Association, 72 Code Book, as it exists on January 1, 2001, and the Arkansas Fire Code as it pertains to single-station fire detection devices.

History. Acts 1989, No. 926, § 6; 1999, No. 1493, § 10; 2001, No. 1474, § 3.

17-40-319 — 17-40-324. [Reserved.]

17-40-325. Registration required.

Every employee of a licensee who is employed as a private investigator, manager, private security officer, commissioned security officer, alarm systems technician, alarm systems monitor, alarm systems apprentice, registrant private investigator, or alarm systems agent must be registered with the Arkansas Board of Private Investigators and Private Security Agencies within fourteen (14) calendar days after the commencement of the employment.

History. Acts 1977, No. 429, § 27; 1979, No. 907, § 16; 1983, No. 899, § 8; A.S.A. 1947, § 71-2148; Acts 1989, No. 926, §§ 11, 14; 2005, No. 2237, § 9.

Amendments. The 2005 amendment

deleted the former subsection (a) designation; deleted former (b); and, in the present text, substituted "commissioned security officer ... systems agent" for "or alarm system agent."

17-40-326. Registration — Applicant qualifications.

(a) The minimum age of a person registered as a private investigator, security officer, alarm agent, alarm technician, alarm monitor, alarm supervisor, or alarm apprentice under this subchapter shall be eighteen (18) years of age.

(b) The Arkansas Board of Private Investigators and Private Security Agencies may promulgate by rule any additional qualifications for an individual registered under this subchapter as a private investigator, manager, private security officer, branch office manager, alarm monitor, alarm supervisor, alarm apprentice, or alarm systems agent, which may include provision for apprenticeship programs.

History. Acts 1977, No. 429, § 27;
A.S.A. 1947, § 71-2148; Acts 1989, No.
926, § 12; 1999, No. 1493, § 11.

17-40-327. Registration — Application.

The application for registration shall be verified and shall include all of the following:

(1) The full name, residence address, residence telephone number, date and place of birth, and the social security number of the employee;

(2) The name and address of the employer, the date the employment commenced, and a letter from the licensee requesting that the employee be registered under his or her license;

(3) The title of the position occupied by the employee and a description of his or her duties;

(4) Two (2) recent photographs of the employee of a type prescribed by the Arkansas Board of Private Investigators and Private Security Agencies and two (2) classifiable sets of his or her fingerprints;

(5)(A) A verified statement disclosing any record of convictions or pleas of guilty or nolo contendere of the applicant of a felony, a Class A misdemeanor, a crime involving an act of violence, or any crime involving moral turpitude.

(B) The verified statement shall be obtained from the Identification Bureau of the Department of Arkansas State Police after a state and national criminal background check has been conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(C) The check shall conform to applicable federal standards and shall include the taking of fingerprints as required in § 17-40-307(a)(7).

(D) The applicant shall sign a release of information to the board and shall be responsible for the payment of any fee associated with the criminal background check.

(E) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all releasable information obtained concerning the applicant; and

(6) Other information, evidence, statements, or documents required by the board.

History. Acts 1977, No. 429, § 28; 1979, No. 907, § 17; A.S.A. 1947, § 71-2149; Acts 2005, No. 2237, § 3.

17-40-328. Registration fee.

The Arkansas Board of Private Investigators and Private Security Agencies is authorized to levy fees for registration as authorized by this chapter in such amounts as may be deemed necessary and proper by the board.

History. Acts 1977, No. 429, § 31; 1979, No. 907, § 19; 1981, No. 792, § 14; A.S.A. 1947, § 71-2152; Acts 1989, No. 926, § 13; 1995, No. 430, § 2; 1999, No. 1493, § 12.

A.C.R.C. Notes. Acts 2005, No. 2237, § 14, provided: "Since the duration of registrations and commissions under the Private Investigators and Private Security Agencies Act, § 17-40-101 et seq., double in length as a result of the act derived from this House Bill 2786 of 2005, the Arkansas Board of Private Investigators

and Private Security Agencies may increase the fees in existence on April 1, 2005, for such registrations and commissions without necessity of promulgating the fee increases under the Arkansas Administrative Procedures Act, § 25-15-201 et seq. The fees increased under the authority of this section shall not exceed for each fee category the combined fees in a fee category for an initial application and renewal as those fees are in existence on April 1, 2005."

17-40-329. Registration — Issuance of identification card — Transfer and fee — Cancellation.

(a) An identification card of such size, design, and content as may be determined by the Arkansas Board of Private Investigators and Private Security Agencies shall be issued to each registrant under this chapter. The date of expiration shall be noted on the identification card. The identification card shall contain a photograph and the name of the agency.

(b) The registration of each registrant, private security officer, alarm systems technician, alarm systems monitor, alarm systems apprentice, registrant private investigator, or alarm systems agent expires two (2) years from the date of issuance and is valid regardless of the security company, alarm company, or investigative company by which the registrant, commissioned security officer, alarm systems technician, alarm systems monitor, alarm systems apprentice, registrant private investigator, or alarm systems agent is employed.

(c) When an individual to whom a registration has been issued terminates his or her position, he or she shall return the identification card to the licensee within five (5) days after his or her date of termination.

(d) When an individual to whom a registration has been issued terminates his or her employment with a company, he or she, prior to becoming employed with a different agency, must notify the board in writing and pay a transfer fee.

(e) Within seven (7) days after the licensee has received the identification of a terminated registered employee, the licensee shall mail or deliver the identification card to the board for cancellation, along with a letter from the licensee stating:

- (1) The date the registered employee terminated;
- (2) The date the licensee received the identification card of the terminated registered employee; and
- (3) The cause for which or the conditions under which the registered employee terminated.

History. Acts 1977, No. 429, §§ 29, 30; 2150, 71-2151; Acts 1989, No. 926, § 14; 1979, No. 907, § 18; 1981, No. 792, § 13; 1995, No. 430, § 3; 1999, No. 1493, § 13; 1983, No. 899, § 9; A.S.A. 1947, §§ 71- 2005, No. 2237, § 10.

17-40-330 — 17-40-334. [Reserved.]

17-40-335. Security officer's commission required.

It is unlawful and punishable as provided in § 17-40-104:

(1) For a person to employ an individual as a private security officer and knowingly authorize or permit him or her to carry a firearm during the course of performing his or her duties as a private security officer if the Arkansas Board of Private Investigators and Private Security Agencies has not issued him or her a security officer commission under § 17-40-336;

(2) For an individual employed as a private security officer to knowingly carry a firearm during the course of performing his or her duties as a private security officer if the board has not issued him or her a security officer commission under § 17-40-336; or

(3) For any person to hire or employ an individual or for any individual to accept employment in the capacity of a private security officer to carry a firearm in the course and scope of his or her duties unless the private security officer is issued a security officer commission by the board.

History. Acts 1977, No. 429, § 19; 1979, No. 907, §§ 12-14; 1981, No. 792, § 11; A.S.A. 1947, § 71-2140.

17-40-336. Commission — Geographical scope.

(a) With the concurrence of the Department of Arkansas State Police, the Arkansas Board of Private Investigators and Private Security Agencies may issue a security officer commission to an individual employed as a uniformed private security officer, provided that the geographical scope of the security officer commission is restricted to one (1) named county in the state and all counties contiguous to the named county, except as allowed in subsection (b) of this section.

(b) With the concurrence of the department, the board may issue a security officer commission that is broader in geographical scope within

the state than that specified in subsection (a) of this section if the broader scope is shown to be in the public interest and necessary to the performance of the duties of the private security officer.

History. Acts 1977, No. 429, § 19;
A.S.A. 1947, § 71-2140.

17-40-337. Commission — Applicant qualifications.

(a) No security officer commission may be issued to any individual who:

- (1) Is under twenty-one (21) years of age;
- (2) Has been found guilty of or who has pleaded guilty or nolo contendere to any felony in any:

(A) Court in the State of Arkansas for which a pardon has not been granted;

(B) Court in another state for which a pardon has not been granted; or

(C) Military or federal court for which a pardon has not been granted; or

- (3) Has committed any act which if committed by a licensee would be grounds for suspension or revocation of a license under this chapter.

(b) The Arkansas Board of Private Investigators and Private Security Agencies shall not issue a security officer commission to an applicant employed by a licensee or the security department of a private business unless the applicant submits evidence satisfactory to the board that he or she meets all qualifications established by this chapter and by the rules of the board.

History. Acts 1977, No. 429, §§ 19, 36;
A.S.A. 1947, §§ 71-2140, 71-2157; Acts
2005, No. 2237, § 4.

17-40-338. Commission — Armored car company employees.

(a) With the concurrence of the Department of Arkansas State Police, the Arkansas Board of Private Investigators and Private Security Agencies shall issue a security officer commission to a qualified employee of an armored car company that is a carrier that has a permit from the proper federal or state regulatory authority to conduct the armored car business in accordance with the permit or certificate.

(b) A security officer commission issued to an employee of an armored car company shall be broad enough in its geographical scope to cover the county or counties in this state in which the armored car company has a permit or certificate to conduct its business.

History. Acts 1977, No. 429, § 19;
A.S.A. 1947, § 71-2140.

17-40-339. Commission — Processing of applications.

(a) The Arkansas Board of Private Investigators and Private Security Agencies shall send a copy of each application for a security officer commission to the sheriff of the county and the chief of police of the principal city of the county in which the applicant resides.

(b) A sheriff or chief of police who wishes to object to the issuance of a security officer commission to a particular applicant may do so by mailing or otherwise delivering, within twenty (20) days after the date the notice was mailed to him or her, a written statement of his or her objection and his or her reasons to the board.

(c) In its discretion, the board may set the matter for a hearing if an objection is timely filed.

History. Acts 1977, No. 429, § 19; A.S.A. 1947, § 71-2140.

17-40-340. Commission — Issuance of identification card.

(a) Each security officer commission issued under this section shall be in the form of an identification card designed by the Arkansas Board of Private Investigators and Private Security Agencies and shall identify the licensee and the security department of a private business by whom the holder of the security officer commission is employed.

(b) No charge shall be imposed for the identification card.

History. Acts 1977, No. 429, § 19; A.S.A. 1947, § 71-2140; Acts 1999, No. 1979, No. 907, § 13; 1981, No. 792, § 11; 1493, § 14.

17-40-341. [Repealed.]

Publisher's Notes. This section, concerning a temporary commission, was repealed by Acts 1999, No. 1493, § 15. The section was derived from Acts 1977, No. 429, § 19; A.S.A. 1947, § 71-2140.

17-40-342. Commission — Termination.

If the holder of a license, registration, or commission terminates his or her employment with the licensee or the security department of a private business, he or she shall return the identification card to the Arkansas Board of Private Investigators and Private Security Agencies within seven (7) days of the date of termination of the employment.

History. Acts 1977, No. 429, § 19; 1981, No. 792, § 11; A.S.A. 1947, § 71-2140; Acts 1999, No. 1493, § 16.

17-40-343. Commission — Expiration.

A security officer commission expires two (2) years after the date it is issued.

History. Acts 1977, No. 429, § 19; 1979, No. 907, § 13; A.S.A. 1947, § 71-2140; Acts 2005, No. 2237, § 11.

17-40-344. Commission — Suspension or denial.

The Administrator of the Arkansas Board of Private Investigators and Private Security Agencies may suspend or deny a security officer commission if the holder or applicant is indicted or arrested for a felony, a Class A misdemeanor, a crime involving an act of violence, or a crime involving moral turpitude.

History. Acts 1977, No. 429, § 19; 2140; Acts 1999, No. 1493, § 17; 2005, No. 1979, No. 907, § 14; A.S.A. 1947, § 71-2237, § 5.

17-40-345 — 17-40-349. [Reserved.]

17-40-350. License, registration, or commission — Grounds for disciplinary action.

(a) The Arkansas Board of Private Investigators and Private Security Agencies may revoke, place on probation, or suspend any registration, license, or security officer commission and may either fine in an amount not to exceed one thousand dollars (\$1,000) for each violation of this chapter or reprimand any registrant, licensee, or commissioned security officer, or both, or the board may deny an application for a registration, license, or security officer commission, or renewal thereof, on proof that the applicant, licensee, commissioned security officer, or registrant has:

(1) Violated any provision of this chapter or violated any of the rules and regulations promulgated under this chapter;

(2) Been found guilty of or pleaded guilty or nolo contendere to any:

(A) Felony, Class A misdemeanor, crime involving an act of violence, or crime involving moral turpitude by any court in the State of Arkansas for which a pardon has not been granted;

(B) Felony, Class A misdemeanor or an offense of a comparable level, any crime involving an act of violence, or any crime involving moral turpitude in any court in another state for which a pardon has not been granted; or

(C) Felony, Class A misdemeanor or an offense of a comparable level, any crime involving an act of violence, or any crime involving moral turpitude in a military or federal court for which a pardon has not been granted;

(3) Practiced fraud, deceit, or misrepresentation;

(4) Made a material misstatement in the application for or renewal of a license, registration, or security officer commission; or

(5) Demonstrated incompetence or untrustworthiness in his or her actions.

(b) The Administrator of the Arkansas Board of Private Investigators and Private Security Agencies may summarily suspend, for no more

than sixty (60) days, any registration or commission if it is shown that the health, safety, or welfare of the public is endangered.

(c)(1) The board may suspend any registration, license, or commission on conviction in this state or any other state or territory of the United States or in any foreign country, of a felony, a Class A misdemeanor, a crime involving an act of violence, or a crime involving an act of moral turpitude for a period not exceeding sixty (60) days pending a hearing and a determination of charges.

(2) If the licensee is a corporation, proof of actual participation and knowledge on the part of the registrant is required.

(3) If the hearing is adjourned at the request of the registrant or licensee, the suspension may be continued for the additional period of the adjournment.

History. Acts 1977, No. 429, § 11; 1947, § 71-2132; Acts 2005, No. 2237, 1979, No. 907, §§ 5-8; 1981, No. 792, §§ 6, 12.
§§ 4-6; 1983, No. 899, §§ 5, 6; A.S.A.

17-40-351. License, registration, or commission — Procedure for denial.

(a) The Administrator of the Arkansas Board of Private Investigators and Private Security Agencies shall have the authority to deny the issuance of a license, registration, or commission.

(b) He or she shall notify the applicant of his or her decision in writing.

(c) The applicant may appeal the decision to the Arkansas Board of Private Investigators and Private Security Agencies, provided he or she perfects the appeal within ten (10) days of his or her notice of rejection.

(d) The board shall hear his or her appeal within sixty (60) days.

History. Acts 1977, No. 429, § 11;
1979, No. 907, §§ 5-8; 1981, No. 792, § 6;
A.S.A. 1947, § 71-2132.

17-40-352. License, registration, or commission — Record of denial, revocation, or suspension.

(a) In the event that the Arkansas Board of Private Investigators and Private Security Agencies denies the application or revokes or suspends any license, security officer commission, or registration, or imposes any reprimand or fine the board's determination shall be in writing and officially signed.

(b) The original copy of the determination, when signed, shall be filed with the board. Copies shall be mailed to the applicant, licensee, commissioned security officer, or registrant and to the complainant within two (2) days after the filing.

History. Acts 1977, No. 429, § 11;
1979, No. 907, §§ 5-8; A.S.A. 1947, § 71-
2132.

17-40-353. Reciprocity.

Any person who is licensed under the laws of another state or territory of the United States as a security services contractor, private investigator, or alarm systems company may apply for a license in this state upon production of satisfactory proof that:

(1) The other state or territory grants similar reciprocity to license holders of this state;

(2) The requirements for licensing in the particular state or territory were at the date of the applicant's licensing substantially equivalent to the requirements now in effect in this state;

(3) The applicant meets all the qualifications for the particular license of § 17-40-306 and pays the fees specified for the particular license in § 17-40-209; and

(4) The applicant meets other reasonable qualifications as may be adopted by the Arkansas Board of Private Investigators and Private Security Agencies for reciprocity.

History. Acts 1993, No. 940, § 1.

17-40-354. Fingerprint cards.

The Identification Bureau of the Department of Arkansas State Police may retain the fingerprint card collected for each individual who is fingerprinted under this chapter.

History. Acts 2005, No. 2237, § 13.

CHAPTER 41**PROFESSIONAL FUND RAISERS AND SOLICITORS****SECTION.**

17-41-101 — 17-41-111. [Repealed.]

17-41-101 — 17-41-111. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 1999, No. 1198, § 18. The chapter was derived from the following sources:

17-41-101. Acts 1959, No. 253, § 1; A.S.A. 1947, § 64-1608; Acts 1991, No. 842, § 1; 1991, No. 1177, § 1.

17-41-102. Acts 1959, No. 253, § 7; A.S.A. 1947, § 64-1614; Acts 1991, No. 842, § 2; 1991, No. 1177, § 1.

17-41-103. Acts 1959, No. 253, § 5; 1979, No. 400, § 2; A.S.A. 1947, § 64-1612; Acts 1991, No. 842, § 3; 1991, No. 1177, § 1.

17-41-104. Acts 1959, No. 253, § 2; A.S.A. 1947, § 64-1609; Acts 1991, No. 842, § 4; 1991, No. 1177, § 1.

17-41-105. Acts 1959, No. 253, § 4; A.S.A. 1947, § 64-1611; Acts 1991, No. 842, § 5; 1991, No. 1177, § 1.

17-41-106. Acts 1959, No. 253, § 6; A.S.A. 1947, § 64-1613; Acts 1991, No. 842, § 6; 1991, No. 1177, § 1.

17-41-107. Acts 1959, No. 253, § 3; 1979, No. 400, § 1; 1983, No. 363, § 1; A.S.A. 1947, § 64-1610; Acts 1991, No. 842, § 7; 1991, No. 1177, § 1.

17-41-108. Acts 1959, No. 253, § 8; A.S.A. 1947, § 64-1615; Acts 1991, No. 842, § 8; 1991, No. 1177, § 1.

17-41-109. Acts 1969, No. 240, § 1; A.S.A. 1947, § 64-1616; Acts 1991, No. 842, § 9; 1991, No. 1177, § 1.

17-41-110. Acts 1991, No. 1177, § 1;
1993, No. 1055, §§ 1, 2.

17-41-111. Acts 1991, No. 1177, § 1.
For present law, see § 4-28-401 et seq.

CHAPTER 42

REAL ESTATE LICENSE LAW

SUBCHAPTER.

1. REAL ESTATE LICENSE LAW — GENERAL PROVISIONS.
2. ARKANSAS REAL ESTATE COMMISSION.
3. LICENSES.
4. APPLICABILITY — REAL ESTATE RECOVERY FUND — DISCIPLINARY ACTIONS.
5. RENEWAL OF LICENSES.
6. INTEREST ON TRUST ACCOUNTS PROGRAM.
7. INTERFERENCE WITH REAL ESTATE LICENSEE RELATIONSHIPS.

A.C.R.C. Notes. References to “this chapter” in §§ 17-42-101 to 17-42-409 and §§ 17-42-501 to 17-42-603 may not apply to § 17-42-410 which was enacted subsequently.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-35-101 et seq.

Former chapter 35, concerning Real Estate Brokers And Salesmen, was repealed by Acts 1993, No. 690, § 29, effective January 1, 1994. The former chapter was derived from the following sources:

17-35-101. Acts 1929, No. 148, § 2; 1931, No. 142, § 1; Pope’s Dig., § 12477; Acts 1975, No. 487, § 1; A.S.A. 1947, § 71-1302; Acts 1989, No. 887, § 1.

17-35-102. Acts 1929, No. 148, § 2; 1931, No. 142, § 1; Pope’s Dig., § 12477; Acts 1975, No. 487, § 1; A.S.A. 1947, § 71-1302; Acts 1987, No. 1038, §§ 1, 2.

17-35-103. Acts 1929, No. 148, § 9; 1931, No. 142, § 1; Pope’s Dig., § 12484; A.S.A. 1947, § 71-1309.

17-35-104. Acts 1929, No. 148, § 11; 1931, No. 142, § 1; Pope’s Dig., § 12486; A.S.A. 1947, § 71-1311; Acts 1991, No. 675, § 3.

17-35-105. Acts 1929, No. 148, § 11; 1931, No. 142, § 1; Pope’s Dig., § 12486; A.S.A. 1947, § 71-1311.

17-35-201. Acts 1929, No. 148, § 3; 1931, No. 142, § 1; Pope’s Dig., § 12478; Acts 1971, No. 152, § 1; 1973, No. 630, § 1; 1975, No. 487, § 2; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 71-1303; Acts 1989, No. 804, § 1.

17-35-202. Acts 1929, No. 148, § 3; 1931, No. 142, § 1; Pope’s Dig., § 12478;

Acts 1971, No. 152, § 1; 1973, No. 630, § 1; 1975, No. 487, § 2; A.S.A. 1947, § 71-1303.

17-35-203. Acts 1929, No. 148, §§ 3, 6, 10; 1931, No. 142, §§ 1, 1[6]; Pope’s Dig., §§ 12478, 12485; Acts 1971, No. 152, § 1; 1973, No. 630, § 1; 1975, No. 487, §§ 2, 4; 1983, No. 555, § 2; 1985, No. 979, § 1; A.S.A. 1947, §§ 71-1303, 71-1306, 71-1310.

17-35-204. Acts 1929, No. 148, § 3; 1931, No. 142, § 1; Pope’s Dig., § 12478; Acts 1971, No. 152, § 1; 1973, No. 630, § 1; 1975, No. 487, § 2; A.S.A. 1947, § 71-1303.

17-35-205. Acts 1991, No. 1243, § 1.

17-35-301. Acts 1929, No. 148, §§ 1, 2; 1931, No. 142, § 1; Pope’s Dig., §§ 12476, 12477; Acts 1953, No. 98, §§ 1, 2; 1975, No. 487, § 1; A.S.A. 1947, §§ 71-1301, 71-1301n, 71-1302; Acts 1991, No. 675, §§ 1, 2.

17-35-302. Acts 1975, No. 481, § 1; A.S.A. 1947, § 71-1304.1.

17-35-303. Acts 1975, No. 481, §§ 2-5; 1985, No. 1016, §§ 1, 2; A.S.A. 1947, §§ 71-1304.2 — 71-1304.5; Acts 1987, No. 1041, § 1; 1991, No. 1142, §§ 1-4.

17-35-304. Acts 1929, No. 148, § 5; Pope’s Dig., § 12480; Acts 1951, No. 395, § 1; 1955, No. 362, § 1; 1959, No. 9, § 1; 1963, No. 157, § 1; 1973, No. 178, § 1; 1975, No. 487, § 3; 1977, No. 163, § 1; 1979, No. 73, § 8; 1983, No. 555, § 1; A.S.A. 1947, § 71-1305; Acts 1991, No. 423, §§ 1, 2.

17-35-305. Acts 1929, No. 148, § 6; 1931, No. 142, § 1; Pope’s Dig., § 12481; Acts 1959, No. 9, § 2; 1963, No. 157, § 2; 1975, No. 487, § 4; 1983, No. 555, § 2;

A.S.A. 1947, § 71-1306; Acts 1989, No. 887, § 2.

17-35-306. Acts 1929, No. 148, § 6; 1931, No. 142, § 1; Pope's Dig., § 12481; Acts 1959, No. 9, § 2; 1963, No. 157, § 2; 1975, No. 487, § 4; 1983, No. 555, § 2; A.S.A. 1947, § 71-1306; Acts 1991, No. 423, § 3.

17-35-307. Acts 1929, No. 148, § 6; 1931, No. 142, § 1; Pope's Dig., § 12481; Acts 1959, No. 9, § 2; 1963, No. 157, § 2; 1975, No. 487, § 4; 1983, No. 555, § 2; A.S.A. 1947, § 71-1306; Acts 1989, No. 887, § 3; 1991, No. 423, § 4.

17-35-308. Acts 1929, No. 148, § 6; 1931, No. 142, § 1; Pope's Dig., § 12481; Acts 1959, No. 9, § 2; 1963, No. 157, § 2; 1975, No. 487, § 4; 1983, No. 555, § 2; A.S.A. 1947, § 71-1306; Acts 1991, No. 423, § 5.

17-35-309. Acts 1929, No. 148, § 7; Pope's Dig., § 12482; A.S.A. 1947, § 71-1307.

17-35-310. Acts 1929, No. 148, § 8; Pope's Dig., § 12483; A.S.A. 1947, § 71-1308; Acts 1989, No. 59, § 1.

17-35-311. Acts 1929, No. 148, § 6; 1931, No. 142, § 1; Pope's Dig., § 12481; Acts 1959, No. 9, § 2; 1963, No. 157, § 2; 1975, No. 487, § 4; 1983, No. 555, § 2; A.S.A. 1947, § 71-1306.

17-35-312. Acts 1929, No. 148, § 6; 1931, No. 142, § 1; Pope's Dig., § 12481; Acts 1959, No. 9, § 2; 1963, No. 157, § 2; 1983, No. 555, § 2; A.S.A. 1947, § 71-1306; Acts 1991, No. 423, § 6.

17-35-313. Acts 1929, No. 148, § 6; 1931, No. 142, § 1; Pope's Dig., § 12481; Acts 1959, No. 9, § 2; 1963, No. 157, § 2; 1975, No. 487, § 4; 1983, No. 555, § 2; A.S.A. 1947, § 71-1306; Acts 1991, No. 423, § 7.

17-35-314. Acts 1991, No. 278, §§ 1-4.

17-35-401. Acts 1979, No. 73, § 6; A.S.A. 1947, § 71-1324.

17-35-402. Acts 1979, No. 73, § 7; A.S.A. 1947, § 71-1325.

17-35-403. Acts 1979, No. 73, § 1; A.S.A. 1947, § 71-1319.

17-35-404. Acts 1979, No. 73, § 4; A.S.A. 1947, § 71-1322.

17-35-405. Acts 1979, No. 73, § 2; A.S.A. 1947, § 71-1320.

17-35-406. Acts 1979, No. 73, § 3; A.S.A. 1947, § 71-1321; Acts 1989, No. 888, §§ 1, 2.

17-35-407. Acts 1979, No. 73, § 3; A.S.A. 1947, § 71-1321.

17-35-408. Acts 1979, No. 73, § 3; A.S.A. 1947, § 71-1321.

17-35-409. Acts 1979, No. 73, § 5; A.S.A. 1947, § 71-1323.

17-35-501. Acts 1987, No. 453, § 1; 1991, No. 814, § 1.

17-35-502. Acts 1987, No. 453, § 9.

17-35-503. Acts 1987, No. 453, § 2; 1991, No. 814, § 2.

17-35-504. Acts 1987, No. 453, § 3; 1991, No. 814, § 3.

17-35-505. Acts 1987, No. 453, § 4; 1991, No. 814, § 4.

17-35-506. Acts 1987, No. 453, § 5; 1991, No. 814, § 5.

17-35-507. Acts 1987, No. 453, § 6; 1991, No. 814, § 6.

17-35-508. Acts 1987, No. 453, § 8; 1991, No. 814, § 7.

17-35-601. Acts 1989, No. 340, § 1.

17-35-602. Acts 1989, No. 340, § 1.

17-35-603. Acts 1989, No. 340, §§ 1, 2.

Effective Dates. Acts 1993, No. 690, § 25; Jan. 1, 1994.

RESEARCH REFERENCES

ALR. Application of state antitrust laws to activities or practices of real estate agents or associations. 22 A.L.R.4th 103.

Revocation or suspension of license for conduct not connected with business as broker. 22 A.L.R.4th 136.

Attorneys: right to become licensed as real estate brokers. 23 A.L.R.4th 230.

Brokers misrepresentation to, or failure to inform vendor regarding vendor's property. 33 A.L.R.4th 944.

Real estate broker's rights and liabilities

as affected by failure to disclose financial information concerning purchaser. 34 A.L.R.4th 191.

Grounds for revocation or suspension of license of real estate broker or salesperson. 7 A.L.R.5th 479.

Broker's liability for failure to disclose information concerning offsite conditions affecting value of property. 41 A.L.R.5th 157.

Am. Jur. 12 Am. Jur. 2d, Brokers, § 5 et seq.

Ark. L. Rev. Real Estate Brokers in Arkansas, 17 Ark. L. Rev. 57.

C.J.S. 12 C.J.S., Brokers, § 5 et seq.

CASE NOTES

ANALYSIS

Constitutionality.

Applicability.

Real Estate Corporations.

Unlawful Practice of Law.

Constitutionality.

Former subchapters 1-3 of this chapter are constitutional. *State v. Hurlock*, 185 Ark. 807, 49 S.W.2d 611 (1932).

Applicability.

Stock brokers, business brokers, and other kinds of brokers are not covered by former subchapters 1-3 of this chapter. *Frier v. Terry*, 230 Ark. 302, 323 S.W.2d 415 (1959).

Real Estate Corporations.

The purpose of the real estate statutes is to protect the public from unlicensed brokers and salespersons, not to prevent those properly licensed persons from doing business in a corporate form. *Standard Abstract & Title Co. v. Rector-Phillips-Morse, Inc.*, 282 Ark. 138, 666 S.W.2d 696 (1984).

Unlawful Practice of Law.

In case involving the alleged unlawful practice of law by real estate brokers, the court held that the preparation of certain instruments which were customarily prepared by real estate brokers or other instruments involving real property rights for others, either with or without pay, except "offers and acceptances," constituted the practice of law. *Arkansas Bar Ass'n v. Block*, 230 Ark. 430, 323 S.W.2d 912 (1959), cert. denied, *Block v. Bar Asso. of Arkansas*, 361 U.S. 836, 80 S. Ct. 87 (1959), overruled in part, *Creekmore v. Izard*, 236 Ark. 558, 367 S.W.2d 419 (1963).

The decision in *Arkansas Bar Ass'n v. Block* 230 Ark. 430, 323 S.W.(2d) 912, is modified to provide that, under certain conditions and when the person for whom he is acting has declined to employ a lawyer to prepare the necessary instruments, a real estate broker is permitted to fill in the blanks in simple printed standardized real estate forms which then must be approved by a lawyer. *Creekmore v. Izard*, 236 Ark. 558, 367 S.W.2d 419 (1963).

SUBCHAPTER 1 — REAL ESTATE LICENSE LAW — GENERAL PROVISIONS

SECTION.

17-42-101. Title.

17-42-102. Legislative findings and intent.

17-42-103. Definitions.

17-42-104. Exemptions.

SECTION.

17-42-105. Criminal sanctions.

17-42-106. Injunction.

17-42-107. Capacity to sue and be sued.

17-42-108. Disclosure requirement.

Effective Dates. Acts 1995, No. 399, § 5: Feb. 21, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this state are in need of revision to clarify the laws; and this act is necessary to provide adequate protection to real estate

licensees. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

17-42-101. Title.

This chapter shall be known as the “Real Estate License Law”.

History. Acts 1993, No. 690, § 25.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Owen, Survey of Arkansas Law: Property, 2 U. Ark. Little Rock L.J. 275.

CASE NOTES**ANALYSIS**

Brokers.
Property Owners.

Brokers.

Evidence sufficient to find that nonresident engineering partners had acted as real estate brokers under prior similar provisions without complying with licensing provisions of this chapter. *Savo v. Miller*, 224 Ark. 799, 276 S.W.2d 67 (1955).

One who, for a monetary consideration, gave to another an option to purchase real estate not owned by the one giving the option and afterward obtained, for a monetary consideration, an option to purchase the real estate from the owner thereof was acting as a real estate broker as that term is defined in prior similar provisions. *Phillips v. Arkansas Real Estate Comm’n*, 244 Ark. 577, 426 S.W.2d 412 (1968).

Where sale of real estate did not occur in seller’s real estate office and purchaser

never met the seller, but purchaser testified that in agreeing to purchase he relied on the fact that seller was a licensed broker, owning the property being sold, and acting as escrow agent, there was sufficient evidence of purchaser’s reliance on seller’s status as a broker to invoke real estate commission’s exercise of jurisdiction. *Eckels v. Arkansas Real Estate Comm’n*, 30 Ark. App. 69, 783 S.W.2d 864 (1990).

Property Owners.

Where the property sold was jointly owned by partners in real estate partnership, they could not be considered agents or brokers within the meaning of prior similar provisions and thus they did not come within the provisions of former subchapters 1-3 of this chapter. *Rothgeb v. Safeco Ins. Co. of Am.*, 259 Ark. 530, 534 S.W.2d 759 (1976).

Cited: *Keahey v. Plumlee*, 94 Ark. App. 121, 226 S.W.3d 31 (2006).

17-42-102. Legislative findings and intent.

The legislature finds that it is necessary to regulate the practice of real estate brokers and salespersons in order to protect the public health, safety, and welfare. It is the legislature’s intent that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public.

History. Acts 1993, No. 690, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Owen, Survey of Arkansas Law: Property, 2 U. Ark. Little Rock L.J. 275.

17-42-103. Definitions.

As used in this chapter:

(1) "Associate broker" means an individual who has a broker's license and who is employed by a principal broker, or is associated with a principal broker as an independent contractor, and who participates in any activity described in subdivision (12) of this section while under the supervision of a principal broker or executive broker. However, an associate broker shall have no supervisory authority over any other licensee;

(2) "Board" means the State Board of Private Career Education;

(3) "Branch office" means a real estate principal broker's office other than his or her principal place of business;

(4) "Classroom hour" means a period of at least fifty (50) minutes, but not more than sixty (60) minutes, of actual classroom instruction with the instructor present;

(5) "Commission" means the Arkansas Real Estate Commission;

(6) "Continuing education" means postlicensure education derived from participation in courses in real estate-related subjects which have been approved by the board or which are not required to be approved by the board;

(7) "Continuing education unit" means a period of ten (10) contact hours of actual classroom instruction with the instructor present;

(8) "Director" means the Executive Director of the Arkansas Real Estate Commission;

(9) "Executive broker" means an individual who has a broker's license and who is employed by a principal broker or associated with a principal broker as an independent contractor and who participates in any activity described in subdivision (12) of this section while under the supervision of a principal broker. However, an executive broker may supervise associate brokers and salespersons;

(10)(A) "Licensee" means an individual who holds any type of license issued by the commission and, unless the context clearly requires otherwise, shall include a principal broker, an executive broker, an associate broker, and a salesperson.

(B) Nothing in this chapter shall preclude a licensee from:

(i) Doing business as a professional corporation under § 4-29-101 et seq.; or

(ii) Receiving payment from a real estate firm or principal broker of an earned commission to the licensee's legal business entity if the licensee earned the commission on behalf of the real estate firm or principal broker;

(11) "Participate in a real estate auction" means any act or conduct done for compensation or the expectation thereof and designed, intended, or expected to affect the bidding or results of a real estate auction, including, without limitation, serving as an auctioneer or ringman or encouraging, soliciting, or receiving bids;

(12) “Principal broker” means an individual, while acting for another for a fee, commission, or other consideration, or the expectation thereof, who:

- (A) Sells, exchanges, purchases, rents, or leases real estate;
- (B) Offers to sell, exchange, purchase, rent, or lease real estate;
- (C) Negotiates, offers, attempts, or agrees to negotiate the sale, exchange, purchase, rent, or lease of real estate;
- (D) Lists, offers, attempts, or agrees to list real estate for sale, lease, or exchange;
- (E) Auctions, offers, attempts, or agrees to auction real estate, or participates in a real estate auction;
- (F) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements thereon;
- (G) Collects, offers, attempts, or agrees to collect rent for the use of real estate;
- (H) Advertises or holds himself or herself out as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate;
- (I) Assists or directs in the procuring of prospects calculated to result in the sale, exchange, lease, or rent of real estate;
- (J) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, lease, or rent of real estate;
- (K) Engages in the business of charging an advance fee in connection with any contract whereby he or she undertakes to promote the sale or lease of real estate either through its listing in a publication issued for such a purpose or for referral of information concerning the real estate to brokers, or both; or
- (L) Performs any of the foregoing acts as an employee of or on behalf of the owner of, or any person who has an interest in, real estate;

(13)(A) “Real estate” means and include leaseholds or any other interest or estate in land and shall include the sale and resale of time-share units.

(B) Unless the context otherwise requires, the words “real estate” and “real property” shall be synonymous; and

(14) “Salesperson” means an individual who has a salesperson’s license and who is employed by a principal broker or is associated with a principal broker as an independent contractor and who participates in any activity described in subdivision (12) of this section while under the supervision of a principal broker or executive broker.

History. Acts 1993, No. 690, § 3; 2007, No. 263, § 1.

Amendments. The 2007 amendment

added (10)(B)(ii), redesignated part of (10)(B) as (10)(B)(i), and made related changes.

CASE NOTES

Cited: Keahey v. Plumlee, 94 Ark. App. 121, 226 S.W.3d 31 (2006).

17-42-104. Exemptions.

(a) The provisions of this chapter shall not apply to:

(1) Any person not licensed under this chapter who performs any of the acts described in § 17-42-103(12) with regard to the property owned, leased, or purchased by him or her;

(2) An attorney in fact under a duly executed and recorded power of attorney from the owner or lessor authorizing the final consummation by performance of any contract for the sale, lease, or exchange of real estate, provided that the attorney in fact receives no fee, commission, or other consideration and has no expectation thereof, directly or indirectly, for performing any such act;

(3) An attorney at law in the performance of his or her duties as an attorney at law;

(4) Any person acting as a receiver, trustee in bankruptcy, administrator, executor, or guardian, or while acting under a court order or under the authority of a will or of a trust instrument;

(5) Any person acting as a resident manager when the resident manager resides on the premises and is engaged in the leasing of real property in connection with his or her employment;

(6) Any person employed only at a salaried or hourly rate to engage in the leasing of real property for or on behalf of a licensed principal broker, the real estate firm of a licensed principal broker, or an owner of real estate, if the person performs one (1) or more of the following activities:

(A) Delivery of a lease application, lease, or an amendment to a lease application or lease to any person;

(B) Receiving a lease application, lease, or an amendment to a lease application for delivery to the principal broker, real estate firm, or owner;

(C) Receiving a security deposit, rental payment, or any related payment for delivery to and made payable to the principal broker, real estate firm, or owner;

(D) Acting under the direct written instructions of the principal broker, real estate firm, or owner:

(i) Showing a rental unit to any person; or

(ii) Assisting in the execution of a preprinted lease or rental agreement containing terms established by the principal broker, real estate firm, or owner; or

(E) Conveying information prepared by the principal broker, real estate firm, or owner about a lease application, lease, the status of a security deposit, or the payment of rent to or from any person;

(7) Any officer or employee of a federal agency or state government, or any political subdivision thereof, in the performance or conduct of his or her official duties;

(8) Any multiple listing service wholly owned by a nonprofit organization or association of real estate licensees; or

(9) An officer of a corporation or a general partner of a partnership with respect to real property owned or leased by the corporation or partnership, or in connection with the proposed purchase or leasing of real property by the corporation or partnership, provided that such acts are not performed by the officer or partner for or in expectation of special compensation and provided further that such acts are not performed as a vocation of the officer or partner.

(b) Any real estate broker licensed by the Arkansas Real Estate Commission on or before January 1, 1985, who is engaged in the sale of real estate by auction only is authorized to employ real estate salespersons to work under the license of the broker even though the broker is employed in a non-real estate-related field and is only a part-time broker.

History. Acts 1993, No. 690, § 4; 2007, No. 263, § 2.

inserted (a)(6), and redesignated the following subdivisions accordingly.

Amendments. The 2007 amendment

CASE NOTES

Exemption Not Found.

Where sale of real estate did not occur in seller's real estate office and purchaser never met the seller, but purchaser testified that in agreeing to purchase he relied on the fact that seller was a licensed broker, owning the property being sold,

and acting as escrow agent, there was sufficient evidence of purchaser's reliance on seller's status as a broker to invoke real estate commission's exercise of jurisdiction. *Eckels v. Arkansas Real Estate Comm'n*, 30 Ark. App. 69, 783 S.W.2d 864 (1990).

17-42-105. Criminal sanctions.

(a) Any person acting as a real estate broker or salesperson within this state who does not hold a valid active Arkansas license or who otherwise violates any of the provisions of this chapter shall be guilty of a Class D felony and, upon conviction, punished accordingly.

(b) Any officer or agent of a corporation or member or agent of a firm, partnership, copartnership, or association who shall personally participate in or in any way be accessory to any violation of this chapter by the firm, partnership, copartnership, association, or corporation shall be subject to all the penalties prescribed in this section for individuals.

(c) Any commissioner of the Arkansas Real Estate Commission, the Executive Director of the Arkansas Real Estate Commission, or other designee, or any licensee residing in the county where the violation occurs may by affidavit institute criminal proceedings against any violator of this chapter without having to file a bond for costs.

(d) The prosecuting attorney for each county shall prosecute any violation of the provisions of this chapter which occurs in his or her county.

History. Acts 1993, No. 690, § 20.

CASE NOTES

ANALYSIS

Appeals by Individuals.
Information.

Appeals by Individuals.

Validity of the provision of prior similar provisions authorizing appeals by individuals on behalf of the state would not be determined where the appeal was actually taken by the prosecuting attorney. State v.

Hurlock, 185 Ark. 807, 49 S.W.2d 611 (1932).

Information.

An information relating to the defendants acting as real estate brokers or salesmen without license charged a public offense within terms of prior similar provisions. State v. Hurlock, 185 Ark. 807, 49 S.W.2d 611 (1932).

17-42-106. Injunction.

(a) Whenever there is reason to believe that any person, licensed or unlicensed, has violated any provision of this chapter, or any order, license, decision, demand, or requirement issued or made pursuant to this chapter, the Arkansas Real Estate Commission, the Executive Director of the Arkansas Real Estate Commission, or other designee may bring an action in the circuit court of any county in which the person resides or does business to enjoin such a person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof.

(b) Whenever there is reason to believe a person is acting as a real estate broker or salesperson in this state without a valid active Arkansas license, any licensee within the county where the violation occurs may bring an action in the circuit court to enjoin such a person from continuing such a violation or engaging therein or doing any act or acts in furtherance thereof.

(c) In any action brought pursuant to this section, the circuit court shall have jurisdiction and authority to enter such preliminary or final injunction or such other relief as may be appropriate.

History. Acts 1993, No. 690, § 21.

Cross References. Jurisdiction of cir-

cuit courts, Ark. Const., Amend. 80, §§ 6, 19.

CASE NOTES

Defendant's Rights.

Action for injunction under prior similar provisions is not a criminal prosecution entitling the defendant to the consti-

tutional guaranties applicable to such prosecutions. Phillips v. Arkansas Real Estate Comm'n, 244 Ark. 577, 426 S.W.2d 412 (1968).

17-42-107. Capacity to sue and be sued.

(a) No action or suit shall be instituted, nor recovery be had, in any court of this state by any person or other legal entity for compensation for performance of any acts described in § 17-42-103(12) unless at the time of offering to perform and performing any such act or procuring any promise to contract for the payment of compensation for any such contemplated act:

(1) The person holds an active license under this chapter as a principal broker; or

(2) The person or other legal entity was the owner of the real estate firm which contracted for or otherwise performed the acts for the compensation which is the subject of the action or suit through either a principal broker or a person approved by the Arkansas Real Estate Commission under § 17-42-301(f) while licensed or approved by the commission at the time of the acts.

(b) No salesperson, executive broker, or associate broker may sue in his or her own capacity for the recovery of fees, commissions, or compensation for services as a salesperson, executive broker, or associate broker unless the action is against the principal broker with whom he or she is licensed or was licensed at the time the acts were performed.

(c)(1) As used in this subsection, “systematic residential rental property inspection program” means a program that requires all persons who reside outside of the State of Arkansas and are owners of residential rental property located within the corporate limits of a municipality in this state to designate an agent for service of process.

(2) In any municipality that has established a systematic residential rental property inspection program, a licensee as defined under § 17-42-103 shall not have criminal or civil liability to the municipality, to the nonresident owner, or otherwise for any action or inaction of the municipality or owner:

(A) When acting as an agent for service of process for a nonresident owner;

(B) Arising from the agent’s performance of duties as the agent for service of process; and

(C) If within three (3) business days of receipt of service of process or at other times established by ordinance in effect as of August 12, 2005, the licensee sends the service of process to the last known address of the nonresident owner.

(3) This subsection supersedes any provision of common law to the contrary.

History. Acts 1993, No. 690, § 8; 2001, No. 1172, § 1; 2005, No. 1840, § 1.

CASE NOTES

ANALYSIS

Construction.
Purpose.
Attorney’s Fee.

Construction.

Legislature did not intend for subsection (b) of this section, regarding the capacity to sue for real estate commissions,

to operate to prohibit individuals from consummating their arbitration proceeding by having a circuit court confirm their award and enter judgment thereon; to hold otherwise would deprive arbitrating parties of their traditional remedies, and the confirmation of an arbitration award could not be likened to filing suit. *Keahey v. Plumlee*, 94 Ark. App. 121, 226 S.W.3d 31 (2006).

Purpose.

The purpose of this section is to ensure that actions for commissions against third parties are brought by the real party in interest, the principal broker, rather than a sub-agent. *Keahey v. Plumlee*, 94 Ark. App. 121, 226 S.W.3d 31 (2006).

Attorney's Fee.

Circuit court did not err in denying attorney's fee because there was not a

complete absence of justiciable issues; the applicability of subsection (b) of this section, regarding capacity to sue for real estate commissions, had not, until the instant appeal, been interpreted by Arkansas' courts and, further, the language of the statute was sufficiently unclear that a party or his attorney would be justified in making an argument regarding its meaning. *Keahey v. Plumlee*, 94 Ark. App. 121, 226 S.W.3d 31 (2006).

17-42-108. Disclosure requirement.

(a)(1) In every real estate transaction involving a licensee, the licensee shall clearly disclose to all parties or to their agents which party or parties he or she is representing.

(2) A licensee may represent more than one (1) party to a real estate transaction pursuant to and subject to regulations and rules of the Arkansas Real Estate Commission.

(b) The timing, method, and other requirements of such a disclosure shall be established by the commission, and the commission shall also determine the consequences of failure to make disclosure in accordance with such requirements.

History. Acts 1993, No. 690, § 16; 1995, No. 399, § 1.

SUBCHAPTER 2 — ARKANSAS REAL ESTATE COMMISSION

SECTION.

- 17-42-201. Creation — Members.
- 17-42-202. Organization — Employees.
- 17-42-203. Powers and duties.
- 17-42-204. Disposition of funds — Fund created.

SECTION.

- 17-42-205. Subpoenas and subpoenas duces tecum.

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-42-201. Creation — Members.

(a)(1) The Arkansas Real Estate Commission shall consist of five (5) members, appointed by the Governor for terms of three (3) years, whose terms shall begin on January 1 and end on December 31 of the third year or when their respective successors are appointed and qualified.

(2)(A) Three (3) members shall have been licensed real estate brokers or licensed real estate salespersons for not fewer than five (5) years prior to their nominations.

(B) The Governor shall appoint members to fill vacancies from a list of four (4) nominees submitted by the Arkansas Realtors Association.

(3)(A) Two (2) members shall not be actively engaged in or retired from the business of real estate.

(B) One (1) shall represent consumers, and one (1) shall be sixty (60) years of age or older and shall represent the elderly.

(C) Both shall be appointed from the state at large, subject to confirmation by the Senate, but shall not be required to be appointed from a list submitted by the Arkansas Realtors Association.

(D) The two (2) positions may not be held by the same person.

(E) Both shall be full voting members but shall not participate in the grading of examinations.

(b) Each commissioner may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1993, No. 690, § 5; 1997, No. 250, § 147.

A.C.R.C. Notes. Acts 1993, No. 690, § 5, provided in part that: "The Arkansas Real Estate Commission as previously created and established shall continue in existence."

Acts 1993, No. 690, § 5, also provided in

part that: "The persons previously appointed and now serving as Commissioners under existing law shall continue to serve the remainder of their respective terms, except that their terms are hereby extended to December 31 of the same calendar year in which they are presently scheduled to expire."

CASE NOTES**Nomination by Association.**

Governor could appoint as a professional member of the Arkansas Real Estate Commission a person who had not

been nominated by the Arkansas Real Estate Association. *McCarley v. Orr*, 247 Ark. 109, 445 S.W.2d 65 (1969) (decision prior to 1971 amendment).

17-42-202. Organization — Employees.

(a)(1) Immediately upon the qualification of the member appointed in each year, the Arkansas Real Estate Commission shall meet and organize by selecting from its members a chair and vice chair.

(2) A simple majority shall constitute a quorum.

(3) The commission shall meet as often as necessary or desirable in order to conduct its business.

(b)(1) The commission shall employ an executive director and such staff as may be necessary to carry out the provisions of this chapter and

to put into effect the rules and regulations the commission may promulgate.

(2) The executive director shall have such duties, authority, and responsibility as the commission may designate, or as necessarily implied herein.

(3) The commission shall fix the salaries of employees.

History. Acts 1993, No. 690, §§ 5, 6.

17-42-203. Powers and duties.

(a) The Arkansas Real Estate Commission may do all things necessary and convenient for carrying into effect the provisions of this chapter and may from time to time promulgate necessary or desirable rules and regulations.

(b) The commission shall have power to administer oaths.

(c) The commission shall adopt a seal with such design as it may prescribe engraved thereon.

(d) Copies of all records and papers in the office of the commission, certified and authenticated by the commission, shall be received in evidence in all courts equally and with like effect as the originals.

(e) The commission:

(1) Shall maintain in writing or in electronic format a list of the names and addresses of all active licensees licensed by it under the provisions of this chapter; and

(2) May publish in writing or in electronic format the names of all persons who have been sanctioned under § 17-42-312 or by consent order, together with other information relative to the enforcement of the provisions of this chapter as it may deem of interest to the public.

(f) The commission may conduct or assist in conducting real estate institutes and seminars and incur and pay the reasonable and necessary expenses in connection therewith. The institutes or seminars shall be open to all licensees.

(g) The commission is authorized to make reasonable charges for materials provided by the commission and for services performed in connection with providing materials.

(h)(1) The commission is authorized to establish reasonable procedures that shall be used by real estate licensees in conducting real estate auctions.

(2) For the protection of the public, real estate licensees who manage and conduct real estate auctions also shall be required to be licensed by the Auctioneer's Licensing Board.

(3) Notwithstanding subdivision (h)(2) of this section, the commission shall have sole jurisdiction over real estate licensees and their actions when managing or conducting real estate auctions.

History. Acts 1993, No. 690, § 5; 2005, No. 1173, § 1; 2007, No. 263, § 3.

Amendments. The 2007 amendment

subdivided (e) into (e)(1) and (e)(2); substituted "Shall maintain in writing or in electronic format" for "shall annually pub-

lish" in (e)(1); in (e)(2), inserted "May publish in writing or in electronic format the names," and substituted "who have been sanctioned under § 17-42-312 or by

consent order" for "whose licenses have been suspended or revoked during that period"; and made related changes.

CASE NOTES

ANALYSIS

Pension Plans.
Regulations.

Pension Plans.

The commission was not authorized to adopt an employee pension plan, and plan adopted by commission was therefore void from its inception. *Parker v. Arkansas Real Estate Comm'n*, 256 Ark. 149, 506 S.W.2d 125 (1974).

Regulations.

Regulation organizing accreditation of schools training real estate brokers was

beyond commission's authority and was invalid. *Gelly v. West*, 253 Ark. 373, 486 S.W.2d 31 (1972).

Where commission adopted rule requiring that Arkansas real estate broker's name appear equally prominent with that of the franchise real estate broker's name, it attempted to regulate advertising by brokers, which is beyond its statutory authority under former subchapters 1-3 of this chapter, even though it is empowered to do all things necessary and convenient for carrying those subchapters into effect. *Century 21 Real Estate of N. Tex., Inc. v. Arkansas Real Estate Comm'n*, 271 Ark. 933, 611 S.W.2d 515 (1981).

17-42-204. Disposition of funds — Fund created.

(a) Except as otherwise provided herein, all fees, charges, fines, and penalties collected by the Arkansas Real Estate Commission shall be deposited into a fund to be known as the "Arkansas Real Estate Commission Fund".

(b) The commission is empowered to expend funds appropriated from the Arkansas Real Estate Commission Fund for the requirements, purposes, and expenses of the commission under the provisions of this chapter.

History. Acts 1993, No. 690, § 5; 2007, No. 263, § 4.

Amendments. The 2007 amendment deleted "upon vouchers signed by the ex-

ecutive director or deputy executive director of the commission and countersigned by the chair or vice chair thereof" at the end of (b), and made a related change.

17-42-205. Subpoenas and subpoenas duces tecum.

(a) The Arkansas Real Estate Commission shall have the power to issue subpoenas and subpoenas duces tecum in connection with both its investigations and hearings.

(b) A subpoena duces tecum may require any book, writing, document, or other paper or thing which is germane to an investigation or hearing conducted by the commission to be transmitted to the commission.

(c)(1) Service of a subpoena shall be as provided by law for the service of subpoenas in civil cases in the circuit courts of this state, and the fees and mileage of officers serving the subpoenas and of witnesses appearing in answer to the subpoenas shall be the same as provided by law for proceedings in civil cases in the circuit courts of this state.

(2)(A) The commission shall issue a subpoena or subpoena duces tecum upon the request of any party to a hearing before the commission.

(B) The fees and mileage of the officers serving the subpoena and of the witness shall be paid by the party at whose request a witness is subpoenaed.

(d)(1) In the event a person shall have been served with a subpoena or subpoena duces tecum as herein provided and fails to comply therewith, the commission may apply to the circuit court of the county in which the commission is conducting its investigation or hearing for an order causing the arrest of the person and directing that the person be brought before the court.

(2) The court shall have the power to punish the disobedient person for contempt as provided by law in the trial of civil cases in the circuit courts of this state.

History. Acts 1993, No. 690, § 5.

SUBCHAPTER 3 — LICENSES

SECTION.

- 17-42-301. License required — Violations.
- 17-42-302. Issuance or denial of license.
- 17-42-303. Education and experience requirements.
- 17-42-304. Fees.
- 17-42-305. Nonresident license requirements.
- 17-42-306. Application procedure — Licensing examination required.
- 17-42-307. Expiration and renewal.

SECTION.

- 17-42-308. Inactive license.
- 17-42-309. Place of business.
- 17-42-310. Change of name or address — Lost license or card.
- 17-42-311. Violations.
- 17-42-312. Investigation of complaint — Penalties.
- 17-42-313. Dismissal of complaint — Appeal.
- 17-42-314. Hearings.
- 17-42-315. Criminal background check.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1995, No. 729, § 5: Mar. 22, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that it is necessary and desirable for the Arkansas Real Estate Commission to be granted the authority to accept alternative experience as meeting the licensure requirements for real estate brokers and that therefore, immediate effect should be given to this measure. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval."

Acts 1995, No. 1285, § 8: became law without the Governor's signature. Apr. 14, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that it is necessary and desirable for the Arkansas Real Estate Commission to be granted the authority to increase fees in order to have sufficient funds with which to efficiently and effectively administer the laws and regulations pertaining to the licensure and regulation of real estate brokers and salespersons and to effectively administer the continuing education requirements for such licensees, and that, therefore, immediate effect should

be given to this measure. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2007, No. 53, § 3: Feb. 6, 2007: Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that current Arkansas law prevents an applicant from sitting for the real estate examination until the receipt of a state and federal background check by the Arkansas Real Estate Commission; that these background checks take a great deal of time to

complete; and that requiring an applicant to delay taking the examination until the background checks are received unfairly punishes the applicant and negatively affects the real estate profession. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

Ark. L. Rev. Case Notes — Equity —
Injunctions — Unlicensed Practice of a
Profession, 11 Ark. L. Rev. 177.

17-42-301. License required — Violations.

(a) No person shall practice or represent himself or herself as a real estate broker or salesperson without first applying for and receiving a license to practice under this chapter.

(b) Any person who directly or indirectly for another with the intention, or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform any single act described in § 17-42-103(12), whether as part of a transaction or as an entire transaction, shall be deemed a broker or salesperson within the meaning of this chapter.

(c) The commission of a single act by a person required to be licensed under this chapter and not so licensed shall constitute a violation of this chapter.

(d) It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or salesperson without first obtaining a license and otherwise complying with the provisions of this chapter.

(e)(1) Notwithstanding the provisions of this section, a person or other legal entity not licensed by the Arkansas Real Estate Commission may own a real estate firm, provided the employees or agents employed by or associated with the firm who perform real estate activities identified under § 17-42-103(12) hold an active license under this chapter.

(2) The firm may enter into contracts or otherwise perform activities identified under § 17-42-103(12) only through a principal broker and any licensee employed by or associated with the principal broker that

holds an active license issued by the commission at the time of performing the contract or activities.

(f) The commission may provide for the continuing temporary operation of a real estate firm having all rights under § 17-42-107(a) upon the death, resignation, termination, or incapacity of the principal broker or upon the closing of a real estate firm, under the direction of a person approved by the commission, subject to time limitations and other conditions imposed by the commission.

History. Acts 1993, No. 690, § 2; 2001, No. 1172, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Owen, Survey of Arkansas Law: Property, 2 U. Ark. Little Rock L.J. 275 (1979).

CASE NOTES

ANALYSIS

Acting as Broker.

Auctions.

Corporations.

Injunctions.

Nonresident Brokers.

Recovery of Commission.

—Appeal.

—Complaint.

—Suit in Corporate Name.

—Waiver.

Acting as Broker.

Business broker claiming commission with respect to sale of corporate business was not engaged in sale of real estate where he claimed no commission on sale of real estate made in connection with the business transaction. *Frier v. Terry*, 230 Ark. 302, 323 S.W.2d 415 (1959).

Actions and activities which are considered to be within the realm of real estate transactions requiring a license must be performed for compensation or with the expectation of compensation to be considered activities of a real estate broker or salesman. *Arkansas Real Estate Comm'n v. Harrison*, 266 Ark. 339, 585 S.W.2d 34 (1979).

Auctions.

A party who sells a tract of real estate at auction under a power of attorney executed by the owner is subject to penal provisions if the party is not licensed as a

real estate broker or salesman. *Henson v. State*, 262 Ark. 456, 557 S.W.2d 617 (1977).

Corporations.

Since corporations can only act through their agents, so long as the salespersons and brokers employed by real estate firms are licensed, then the requirements mandated by prior similar provisions are being met. *Standard Abstract & Title Co. v. Rector-Phillips-Morse, Inc.*, 282 Ark. 138, 666 S.W.2d 696 (1984).

Prior similar provisions did not prevent licensed real estate brokers and salespersons from suing in their corporate name to collect a commission due them. *Standard Abstract & Title Co. v. Rector-Phillips-Morse, Inc.*, 282 Ark. 138, 666 S.W.2d 696 (1984).

Injunctions.

Notwithstanding the fact prior similar provisions contains criminal penalties for its violation, an action to enjoin commission of the acts prohibited by prior similar provisions is not a criminal action entitling the defendant to a jury trial. *Phillips v. Arkansas Real Estate Comm'n*, 244 Ark. 577, 426 S.W.2d 412 (1968).

Nonresident Brokers.

If nonresident real estate agent brings a prospect to Arkansas to show him land, the act is the act of a real estate broker in Arkansas, and Arkansas state licensing

law applies to the transaction. *Campbell v. Duncan*, 84 F. Supp. 732 (E.D. Ark. 1949).

Nonresident real estate agent cannot sue in the state courts of Arkansas, or in the federal courts for Arkansas, to collect a note given him as a commission for sale of land in Arkansas if he does not have an Arkansas real estate license. *Campbell v. Duncan*, 84 F. Supp. 732 (E.D. Ark. 1949).

Evidence sufficient to find that nonresident engineering partners had acted as real estate brokers under prior similar provisions without complying with licensing provisions of this chapter. *Savo v. Miller*, 224 Ark. 799, 276 S.W.2d 67 (1955).

An out-of-state broker does not have to be licensed in Arkansas in order to enforce his contract in this state, provided the contract does not require him to perform brokerage services in this state. However, it is unlawful to act as a real estate broker or salesman in Arkansas without a license issued by the Arkansas Real Estate Commission. *Maas v. Merrell Assocs.*, 13 Ark. App. 240, 682 S.W.2d 769 (1985).

Recovery of Commission.

A broker who made no application for a license before effecting a sale of land was not entitled to recover a commission. *Birnbach v. Kirspele*, 188 Ark. 792, 67 S.W.2d 730 (1934); *Nelson v. Stolz*, 197 Ark. 1053, 127 S.W.2d 138 (1939); *McMillan v. Dunlap*, 206 Ark. 434, 175 S.W.2d 987 (1943).

A salesman without a license cannot recover any commission; moreover, contracts made by unlicensed salesmen are invalid and cannot be enforced. *Dunn v. Phoenix Village, Inc.*, 213 F. Supp. 936 (W.D. Ark. 1963).

—Appeal.

Where entitlement of unlicensed person to commission on real estate transaction was not raised in trial court it could not be raised on appeal. *St. Louis Union Trust*

Co. v. Hammans, 204 Ark. 298, 161 S.W.2d 950 (1942).

—Complaint.

Where broker suing to recover real estate commission did not allege in his complaint that he was a licensed real estate dealer but evidence to that effect was introduced without objection, trial court could properly treat the complaint as amended to conform to the proof. *Dacus v. Burns*, 206 Ark. 810, 177 S.W.2d 748 (1944).

After case had been submitted to jury and defendant moved for a directed verdict on ground that complaint of real estate broker in suit for commission failed to allege broker was licensed, it was within discretion of trial court to permit broker to be recalled and testify that she was licensed, treating the pleadings as amended to conform to the proof. *El Dorado Real Estate Co. v. Garrett*, 240 Ark. 483, 400 S.W.2d 497 (1966).

—Suit in Corporate Name.

Where real estate agent brought action for commission under name of unlicensed real estate corporation but later substituted himself individually as plaintiff, it was not a defense to action that corporation was unlicensed, as the agent himself was a licensed real estate broker. *Childs v. Philpot*, 253 Ark. 589, 487 S.W.2d 637 (1972).

—Waiver.

Where defendant in action to recover real estate commission did not plead prior similar provisions in its answers or state it as the grounds for its motion for a directed verdict, the defense provided for by the section was waived and could not be the basis of defendant's motion for judgment notwithstanding the verdict. *Dodson Creek, Inc. v. Fred Walton Realty Co.*, 2 Ark. App. 128, 620 S.W.2d 947 (1981).

17-42-302. Issuance or denial of license.

(a) The Arkansas Real Estate Commission shall issue a license to any applicant who meets the following requirements:

- (1) Attainment of the age of majority;
- (2) Successful completion of educational requirements prescribed by this chapter;
- (3) Successful completion of experience requirements prescribed by this chapter;

(4) Successful completion of an examination administered or approved by the commission;

(5) Demonstrates no record of unprofessional conduct;

(6) Evidence of good reputation for honesty, trustworthiness, and integrity sufficient to safeguard the interests of the public; and

(7) Completion of a criminal history background check through the Department of Arkansas State Police and the Federal Bureau of Investigation as set out in § 17-42-315.

(b) The commission shall determine what constitutes adequate proof of meeting the requirements of subsection (a) of this section and shall deny a license to any applicant who fails to meet the requirements or who fails to pay the appropriate fees.

History. Acts 1993, No. 690, § 9; 2005, No. 657, § 1.

17-42-303. Education and experience requirements.

(a) The Arkansas Real Estate Commission shall establish educational requirements for licensure, including the standards and procedures for approval of educational programs, subject to the following conditions:

(1) The maximum number of educational hours to be required of an applicant for a broker's license shall not exceed one hundred twenty (120) hours within the thirty-six (36) months immediately preceding the date of application; and

(2) The maximum number of hours required of an applicant for a salesperson's license shall not exceed ninety (90) hours, at least thirty (30) hours of which shall be in the basic principles of real estate.

(b)(1) The commission shall establish the experience requirement for licensure for an applicant for a broker's license subject to the condition of serving an active, bona fide apprenticeship by holding a valid real estate salesperson's license issued by the commission or by holding a valid real estate salesperson's license or broker's license issued by the appropriate licensing agency of another state for a period of not less than twenty-four (24) months within the previous forty-eight-month period immediately preceding the date of application.

(2) However, the commission may waive the experience requirement for a real estate broker applicant who has held an active real estate broker's license for a period of not less than eighteen (18) months or who has experience acceptable to the commission in a field considered real estate related for a period of not less than twenty-four (24) months within the previous forty-eight-month period immediately preceding the date of application.

(c)(1) The commission shall establish a post-licensure education requirement for individuals in their first year of licensure as salespersons or brokers.

(2) The commission shall not require more than thirty (30) classroom hours of post-licensure education hours.

History. Acts 1993, No. 690, § 10; 1995, No. 729, § 1; 2001, No. 748, § 1; 2007, No. 263, § 5.

Amendments. The 2007 amendment substituted "Education and experience"

for "Educational" in the section heading; subdivided (b) into (b)(1) and (b)(2); and added "or who has experience ... the date of application" at the end of (b)(2).

17-42-304. Fees.

The Arkansas Real Estate Commission shall have authority to establish, charge, and collect the following fees:

- (1) An application fee not to exceed fifty dollars (\$50.00);
 - (2) An original broker's license fee not to exceed eighty dollars (\$80.00);
 - (3) A broker's license annual renewal fee not to exceed eighty dollars (\$80.00);
 - (4) An original salesperson's license fee not to exceed sixty dollars (\$60.00);
 - (5) A salesperson's license annual renewal fee not to exceed sixty dollars (\$60.00);
 - (6) A broker's expired license fee not to exceed one hundred ten dollars (\$110) per year or fraction thereof;
 - (7) A salesperson's expired license fee not to exceed eighty dollars (\$80.00) per year or fraction thereof;
 - (8) A license reissuance fee not to exceed thirty dollars (\$30.00);
 - (9) An initial duplicate license fee not to exceed thirty dollars (\$30.00);
 - (10) A duplicate license annual renewal fee not to exceed thirty dollars (\$30.00);
 - (11) A transfer fee not to exceed thirty dollars (\$30.00);
 - (12)(A) An examination fee not to exceed seventy-five dollars (\$75.00).
- (B) However, the commission at its discretion may direct each applicant to pay the actual costs of the examination fee directly to a testing service engaged by the commission to administer the examination;
- (13) Pursuant to § 17-42-313, an appeal filing fee not to exceed one hundred dollars (\$100);
 - (14) A Real Estate Recovery Fund fee not to exceed twenty-five dollars (\$25.00); and
 - (15) The actual cost of a state and federal criminal history background check.

History. Acts 1993, No. 690, § 7; 1995, No. 1285, § 1; 2001, No. 535, § 1; 2005, No. 657, § 2.

Publisher's Notes. Acts 1995, No. 1285 became law without the Governor's signature. Apr. 14, 1995.

17-42-305. Nonresident license requirements.

(a) In order to be licensed in Arkansas a nonresident must:

(1) Either:

(A) Meet the requirements of § 17-42-302; or

(B) Show satisfactory proof of current active licensure in the applicant's resident jurisdiction, which must be a jurisdiction that offers Arkansas licensees opportunities for licensure substantially comparable to those offered to that jurisdiction's licensees by this chapter;

(2) Pay any required fees;

(3) Sign a statement that the applicant has read the Real Estate License Law, § 17-42-101 et seq., and regulations and agrees to abide by its provisions in all real estate activity;

(4)(A) Affiliate with a resident or nonresident principal broker licensed by the Arkansas Real Estate Commission, if a salesperson or associate broker.

(B) If a nonresident licensee terminates the affiliation with a principal broker licensed by the commission, the license of the nonresident shall automatically be terminated until the nonresident places the license on inactive status or affiliates with another broker licensed by the commission;

(5)(A) Cause the licensing body of the applicant's resident jurisdiction to furnish to the commission a certification of licensure and copies of the records of any disciplinary actions taken against the applicant's license in that or other jurisdictions.

(B) Disciplinary action by any other lawful licensing authority may be grounds for denial of a license to a nonresident or for suspension or revocation of a license issued to a nonresident or for other appropriate disciplinary action authorized by this chapter;

(6)(A) File with the Executive Director of the Arkansas Real Estate Commission a designation in writing that appoints the executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to the licensee may be served.

(B) Service upon the executive director shall be equivalent to personal service upon the licensee.

(C) Copies of the appointment certified by the executive director shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the originals thereof might be admitted.

(D) In such a written designation, the licensee shall agree that any lawful process against the licensee which is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this jurisdiction.

(E) The executive director shall mail a copy of any such process or notice by certified mail to the last known business address of the licensee; and

(7)(A) Agree in writing to cooperate with any investigation initiated by the commission by promptly supplying any documents the commission may request and by personally appearing at the commission's offices or such other location in this state as the commission may request.

(B) If notice is sent by certified mail to the last known business address of a nonresident licensee directing the licensee to produce documents or to appear for an interview and the licensee fails to comply with that request, the commission may impose on the nonresident licensee any disciplinary sanction permitted by this chapter.

(b) The commission in its discretion may enter into written agreements with similar licensing authorities of other jurisdictions as may be necessitated by the laws of those jurisdictions to assure for Arkansas licensees nonresident licensure opportunities comparable to those afforded to nonresidents by this chapter.

(c) The commission may deny licensure under subdivision (a)(1)(B) of this section to an applicant whose resident licensure is in a jurisdiction which the commission deems not to have educational or experience requirements at least equal to those of Arkansas.

History. Acts 1993, No. 690, § 11.

17-42-306. Application procedure — Licensing examination required.

(a)(1) Applications for licensure must be submitted on forms provided by the Arkansas Real Estate Commission.

(2) The commission may require any information and documentation needed to determine if the applicant meets the criteria for licensure as provided in this chapter.

(3) Each applicant shall pay such application fee and examination fee as the commission may require pursuant to § 17-42-304.

(4)(A) Applicants that have provided all required information and documentation to the commission may sit for the examination, provided that a request has been sent to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check.

(B) Upon the successful completion of the license exam, no license shall be issued until the commission receives and approves the state and federal criminal background check.

(b)(1)(A) An applicant who successfully completes the examination shall pay, within ninety (90) days from the date of the examination, such license fee and Real Estate Recovery Fund fee as the commission may require pursuant to § 17-42-304.

(B)(i) If the federal criminal background check has not been received by the commission within ninety (90) days of the date of the examination, the date may be extended by the commission until receipt of the federal criminal background check.

(ii) No real estate license shall be issued until receipt and approval by the commission of the state and federal criminal background check.

(2) The applicant's failure to pay the license fee and Real Estate Recovery Fund fee within that ninety-day period shall invalidate the

examination results, and the applicant shall be required to make new application and retake the examination as an original applicant.

History. Acts 1993, No. 690, § 12; added “Licensing examination required” 2007, No. 53, § 1. to the section heading; added (a)(4) and

Amendments. The 2007 amendment (b)(1)(B); and made related changes.

17-42-307. Expiration and renewal.

(a) Every license, both active and inactive, shall expire on a date established by the Arkansas Real Estate Commission.

(b)(1) For each active licensee, the commission shall issue a new license for each ensuing renewal period in the absence of any reason or condition that might warrant the refusal of a license, upon receipt of a written request no later than ninety (90) days prior to the expiration of the license upon forms provided by the commission together with the renewal fee.

(2)(A) For any broker or salesperson who does not wish to engage in the real estate business, the license shall be renewed on inactive status, in the absence of any reason or condition that might warrant the refusal of a license, upon receipt of the written request of the applicant no later than ninety (90) days prior to the expiration of the license upon forms provided by the commission together with the renewal fee.

(B) However, the commission may limit the number of renewal periods in which a license may be renewed on inactive status.

(C) The renewal fee for inactive status shall be the same as for renewal of an active license.

(3) An application for renewal filed after the date established by the commission to renew a license shall be treated as an application to renew an expired license.

(c) If any person to whom a valid license has been issued permits the license to expire for a period not in excess of that established by the commission, the commission shall issue to the person a current license without requiring the person to submit to any examination if the person furnishes such information as the commission requires, including proof of completion of appropriate continuing education requirements, and pays such fee as the commission requires.

(d)(1) New salesperson and broker licensees shall complete post-licensure education in accordance with § 17-42-303(c).

(2) If the licensee fails to complete the post-licensure education requirements within twelve (12) months after the date the license was issued, the commission shall place the license on inactive status until the commission receives documentation that the licensee has completed the post-licensure education requirements.

History. Acts 1993, No. 690, § 13; Arkansas Real Estate Commission” for 2001, No. 748, § 2; 2007, No. 263, § 6. “December 31 of each year” in (a); in (b),

Amendments. The 2007 amendment substituted “the commission” for “the Arkansas Real Estate Commission” and “re-

newal period" for "year" in (b)(1), substituted "ninety (90) days prior to the expiration of the license" for "September 30 of each year" and "renewal fee" for "the annual fee therefor" in (b)(1) and (b)(2)(A), and substituted "the date established by

the commission to renew a license" for "September 30 of any year" in (b)(3); deleted "Beginning January 1, 2002" at the beginning of (d)(1); and made related changes.

17-42-308. Inactive license.

(a)(1) A licensee may place his or her license on inactive status.

(2) The holder of an inactive license shall not practice as a real estate broker or salesperson in this state without first activating the license.

(b) An inactive license which is not renewed shall be treated as an expired license pursuant to § 17-42-307.

(c) Inactive licenses may be activated upon compliance with requirements established by the Arkansas Real Estate Commission, including payment of appropriate fees.

(d) The provisions of this chapter relating to disciplinary action against a licensee shall be applicable to an inactive or expired license.

History. Acts 1993, No. 690, § 14.

17-42-309. Place of business.

(a) Every principal broker shall maintain a place of business and shall display a permanently attached sign bearing the name under which the broker conducts his or her real estate business and the words "real estate", "realty", or other words approved by the Arkansas Real Estate Commission which clearly indicate to the public that the broker is engaged in the real estate business.

(b)(1) If a principal broker maintains a branch office, a duplicate license shall be issued upon payment by the principal broker of the initial fee and, thereafter, such renewal fee as the commission may require pursuant to § 17-42-304.

(2) However, a duplicate license shall not be issued for a branch office at which licensees are assigned unless the principal broker establishing the branch office has designated an executive broker to supervise the licensees.

History. Acts 1993, No. 690, § 15; 2005, No. 561, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Administrative License Revocation in Arkansas, 14 Ark. L. Rev. 139.

17-42-310. Change of name or address — Lost license or card.

(a)(1) When a licensee changes his or her name, place of business, or address shown on the license, or loses a license or pocket card, he or she shall promptly notify the Arkansas Real Estate Commission of such a change or loss.

(2) Upon receipt of the notice and payment of the relevant fee, the commission shall reissue the license.

(b) It is the responsibility of each licensee to keep the commission notified of his or her mailing address, both home and business, at all times.

(c) The licenses of the principal broker and all licensees employed by or associated with him or her shall be retained by the principal broker and conspicuously displayed in his or her place of business.

(d)(1) Upon the termination of a licensee's employment by or association with a principal broker, the licensee shall promptly deliver his or her pocket card to the principal broker, and the principal broker shall promptly notify the commission of the termination and return to the commission the license and pocket card of the terminated licensee, which shall automatically inactivate the license.

(2) If the pocket card is unavailable, the principal broker shall promptly so notify the commission in writing.

(e) A license inactivated under this section may be transferred to another principal broker upon application of the licensee, payment of the relevant fee, and submission of a statement that he or she is not taking any listings, management contracts, appraisals, lease agreements, or copies of any such documents or any other pertinent information belonging to the licensee's previous principal broker or firm.

History. Acts 1993, No. 690, § 15;
2005, No. 560, § 1.

CASE NOTES**ANALYSIS**

Acts Not Requiring a License.

Appeal.

Authority of Commission.

Evidence.

Notice.

Reliance.

Acts Not Requiring a License.

The commission has the authority to govern the acts of licensed salesmen and brokers who are acting on matters which do not require a license. *Black v. Arkansas Real Estate Comm'n*, 275 Ark. 55, 626 S.W.2d 954 (1982).

Appeal.

Where commission after notice and hearing revoked license for cause, the circuit court did not err in refusing to allow the licensee to present additional evidence on appeal. *Woolsey v. Arkansas Real Estate Comm'n*, 263 Ark. 348, 565 S.W.2d 22 (1978).

Authority of Commission.

Prior similar provisions gave the commission authority over persons who assumed to act as brokers or salesmen. *Black v. Arkansas Real Estate Comm'n*, 275 Ark. 55, 626 S.W.2d 954 (1982).

Prior similar provisions allowed the

commission to charge a broker with violations of the real estate laws and did not require that a complaint must first be filed by an injured person. *Eckels v. Arkansas Real Estate Comm'n*, 30 Ark. App. 69, 783 S.W.2d 864 (1990) (decision under law prior to 1989 amendment).

Evidence.

Evidence sufficient to sustain commission's decision to suspend a license for unprofessional conduct. *Fowler v. Arkansas Real Estate Comm'n*, 258 Ark. 292, 524 S.W.2d 230 (1975).

Where there was substantial evidence to support the commission's finding of misrepresentation and the making of false promises, the commission had the authority to suspend broker's license, notwithstanding the fact that the defendant could

have performed the same transactions had he possessed no license at all. *Black v. Arkansas Real Estate Comm'n*, 275 Ark. 55, 626 S.W.2d 954 (1982).

Notice.

The commission's order and notice of hearing gave broker adequate notice of charges against him where broker's testimony and exhibits at the hearing indicated he was prepared to answer the charges. *Fowler v. Arkansas Real Estate Comm'n*, 258 Ark. 292, 524 S.W.2d 230 (1975).

Reliance.

Purchasers of land were entitled to rely upon licensed broker to act in the manner in which a broker or salesman should act. *Black v. Arkansas Real Estate Comm'n*, 275 Ark. 55, 626 S.W.2d 954 (1982).

17-42-311. Violations.

(a) The following acts, conduct, or practices are prohibited, and any licensee found guilty shall be subject to disciplinary action as provided in § 17-42-312:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment;

(2) Violating any of the provisions of this chapter or any rules or regulations adopted pursuant to this chapter or any order issued under this chapter;

(3) Being convicted of or pleading guilty or nolo contendere to a felony or crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness regardless of whether the imposition of sentence has been deferred or suspended;

(4) Making any substantial misrepresentation;

(5) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication, or distribution of false statements, descriptions, or promises of such character as to reasonably induce, persuade, or influence any person to act thereon;

(6) Failing within a reasonable time to account for or to remit any moneys coming into his or her possession which belong to others;

(7) Committing any act involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness;

(8) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom he or she acts or accepting a commission or valuable consideration for the performance of any of the acts specified in this chapter from any person except the licensed principal broker under whom he or she is licensed;

(9) Acting as a broker or salesperson while not licensed with a principal broker, representing or attempting to represent a broker other

than the principal broker with whom he or she is affiliated without the express knowledge and consent of the principal broker, or representing himself or herself as a salesperson or having a contractual relationship similar to that of a salesperson with anyone other than a licensed principal broker;

(10) Advertising in a false, misleading, or deceptive manner;

(11) Being unworthy or incompetent to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public;

(12) Paying a commission or valuable consideration to any person for acts or services performed in violation of this chapter, including paying a commission or other valuable consideration to an unlicensed person for participation in a real estate auction; and

(13) Any other conduct, whether of the same or a different character from that specified in this section, which constitutes improper, fraudulent, or dishonest dealing.

(b) Any license obtained through mistake or inadvertence shall be subject to revocation.

(c) A licensee whose license is revoked pursuant to this section shall be eligible to apply for a new license after the expiration of two (2) years from the date of revocation.

History. Acts 1993, No. 690, § 17; substituted “or pleading guilty ... deferred or suspended” for “any crime specified in

Amendments. The 2007 amendment § 17-42-315” in (a)(3).

CASE NOTES

Cited: *Keahey v. Plumlee*, 94 Ark. App. 121, 226 S.W.3d 31 (2006).

17-42-312. Investigation of complaint — Penalties.

(a)(1) The Arkansas Real Estate Commission may, on its own motion, and shall, upon the verified complaint in writing of any person, provided that the complaint and any evidence, documentary or otherwise, presented in connection therewith shall make out a prima facie case, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker or real estate sales person regardless of whether the transaction was for his or her own account or in his or her capacity as a broker or salesperson.

(2) If the complaint fails to state a prima facie case or if, after investigation, the Executive Director of the Arkansas Real Estate Commission determines that there is insufficient proof of a violation of this chapter, the executive director shall dismiss the complaint.

(3) If, however, the executive director determines that there is sufficient proof of a violation of this chapter, the licensee shall be notified of the charges against him or her and ordered to appear for a hearing.

(4) If the licensee is found to have violated this chapter, the commission may impose any one (1) or more of the following sanctions:

(A) Suspension, revocation, or denial of his or her license or the renewal thereof;

(B) A penalty not to exceed one thousand dollars (\$1,000) for each violation;

(C) Require completion of appropriate educational programs or courses;

(D) Require successful completion of an appropriate licensing examination;

(E) Place conditions or restrictions upon the licensee's license or practice; or

(F) Such other requirements or penalties as may be appropriate to the circumstances of the case and which would achieve the desired disciplinary purposes, but which would not impair the public welfare and morals.

(b) The commission is authorized to file suit in either the Pulaski County Circuit Court or the circuit court of any county in which the defendant resides or does business to collect any penalty assessed pursuant to this chapter if the penalty is not paid within the time prescribed by the commission.

(c) When deemed appropriate, the commission may suspend the imposition of any sanctions imposed upon appropriate terms and conditions.

History. Acts 1993, No. 690, § 17.

17-42-313. Dismissal of complaint — Appeal.

(a) Any person whose complaint against a licensed real estate broker or salesperson is dismissed by the Executive Director of the Arkansas Real Estate Commission without a hearing may appeal the dismissal to the Arkansas Real Estate Commission subject to and in accordance with the following provisions:

(1) The request for appeal must be in writing and received in the office of the commission not later than sixty (60) days following the date of dismissal by the executive director;

(2) The request for appeal must be accompanied by such filing fee as the commission may require pursuant to § 17-42-304; and

(3)(A)(i) The appellant must also pay the cost of preparing the record for the commission's review, which cost shall be determined by the commission.

(ii) The costs must be paid by the appellant within thirty (30) days after notification of the amount. Otherwise, the appeal will be dismissed.

(B) However, if the commission's review results in a hearing being ordered on the complaint, both the filing fee and the cost of preparing the record shall be refunded to the appellant.

(C) Any person who is indigent and unable to pay either the filing fee or the cost of the record, or both, may file a pauper's oath in such form as required by the commission, and, if the commission deter-

mines that the appellant is indeed indigent, the filing fee or cost of the record, or both, shall be waived.

(b)(1) All appeals duly perfected pursuant to subsection (a) of this section shall be presented to and decided by the commission on the written record.

(2) Such a decision may be to affirm the executive director's dismissal, to order additional investigation, or to order a hearing on the complaint.

History. Acts 1993, No. 690, § 18.

17-42-314. Hearings.

(a) Proceedings under § 17-42-312 and hearings on denials of licenses shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Except in cases in which a licensee has obtained a license by false or fraudulent representation, the Arkansas Real Estate Commission shall not investigate the actions of or conduct any disciplinary hearing regarding any real estate broker or salesperson unless the complaint is filed or the investigation initiated within three (3) years from the date of the actions complained of or concerning which an investigation is initiated.

History. Acts 1993, No. 690, § 19.

17-42-315. Criminal background check.

(a)(1) Beginning January 1, 2006, the Arkansas Real Estate Commission may require each original applicant for a license issued by the commission to apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2)(A) An applicant may sit for the examination required by § 17-42-302(a)(4) while awaiting the results of a background check prescribed by this section.

(B) No license shall be issued to an applicant until the commission receives and approves the state and federal criminal background check.

(b) The check shall conform to applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the commission and shall be responsible for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall be allowed to retain the fingerprint card of the applicant until notified by the commission that the person is no longer licensed.

(f) Except as provided in subsection (g) of this section, a person shall not receive or hold a license issued by the commission if the person has been convicted of or pleaded guilty or nolo contendere to a felony or a crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness.

(g)(1) The provisions of subsection (f) of this section may be waived by the commission upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to sanctions.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the public.

(h)(1) Any information received by the commission from the Identification Bureau of the Department of Arkansas State Police or the Federal Bureau of Investigation pursuant to this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative, or by the person whose license is subject to sanctions or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(i) Any information made available to the affected applicant for licensure or the person whose license is subject to sanctions shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the background check.

(k) The commission may adopt rules and regulations to fully implement the provisions of this section.

History. Acts 2005, No. 657, § 4; 2007, No. 53, § 2; 2007, No. 263, § 8.

Amendments. The 2007 amendment by No. 53 added (a)(2).

The 2007 amendment by No. 263 inserted "or pleaded guilty or nolo contendere to" in (f).

**SUBCHAPTER 4 — APPLICABILITY — REAL ESTATE RECOVERY FUND —
DISCIPLINARY ACTIONS**

SECTION.

- 17-42-401. Applicability.
17-42-402. Construction.
17-42-403. Creation — Administration.
17-42-404. Fees — Use of fund.
17-42-405. Additional fee.
17-42-406. Disciplinary hearing — Procedure.

SECTION.

- 17-42-407. Jurisdiction.
17-42-408. Appeal.
17-42-409. Subrogation — Suspension of license.
17-42-410. Applicability of Acts 1997, No. 781.

A.C.R.C. Notes. References to “this subchapter” in §§ 17-42-401 to 17-42-409 may not apply to § 17-42-410 which was enacted subsequently.

17-42-401. Applicability.

The provisions of this subchapter shall apply only to:

- (1) Licensees who were licensed at the time of the occurrence of the acts or violations complained of; and
- (2) Acts or violations which occur after December 31, 1979.

History. Acts 1993, No. 690, § 22.

17-42-402. Construction.

Nothing in this subchapter shall be construed to limit or restrict in any manner other civil or criminal remedies which may be available to any person.

History. Acts 1993, No. 690, § 22.

17-42-403. Creation — Administration.

There is created and established the “Real Estate Recovery Fund”, which shall be maintained and administered by the Arkansas Real Estate Commission as provided in this subchapter.

History. Acts 1993, No. 690, § 22.

17-42-404. Fees — Use of fund.

(a) The Arkansas Real Estate Commission shall set the fees at such amount as it deems necessary to initially establish the Real Estate Recovery Fund and to reestablish the fund at the beginning of each annual renewal period. However, the fees shall not exceed the limits set forth in § 17-42-405.

(b) The assets of the fund may be invested and reinvested as the commission may determine, with the advice of the State Board of Finance.

(c) Any amounts in the fund may be used by the commission for the following additional purposes:

(1)(A) To fund educational seminars and other forms of educational projects for the use and benefit generally of licensees.

(B) The production and distribution of informational literature of an educational nature shall qualify as educational projects;

(2) To fund real estate chairs or courses at various state institutions of higher learning for the purpose of making such courses available to licensees and the general public;

(3) To fund research projects in the field of real estate; and

(4) To fund any and all other educational and research projects of a similar nature having to do with the advancement of the real estate field in Arkansas.

History. Acts 1993, No. 690, § 22;
2003, No. 837, § 1.

17-42-405. Additional fee.

(a) In addition to the other fees provided for in this chapter and regulations of the Arkansas Real Estate Commission, each licensed real estate broker and salesperson shall pay to the commission for the benefit of the Real Estate Recovery Fund a fee as the commission may require, not to exceed the lesser of:

(1) Twenty-five dollars (\$25.00) per annual renewal; or

(2) An amount sufficient to restore the fund balance to two hundred fifty thousand dollars (\$250,000).

(b) Likewise, each person who becomes a licensee for the first time shall at that time pay to the commission for the benefit of the fund such fee as the commission may require, not to exceed twenty-five dollars (\$25.00).

(c) No fees collected under the provisions of this subchapter may be expended from the fund except for the purposes set forth in this subchapter.

History. Acts 1993, No. 690, § 22.

17-42-406. Disciplinary hearing — Procedure.

(a)(1) In any disciplinary hearing before the Arkansas Real Estate Commission which involves any licensee who has allegedly violated any provision of this chapter or commission regulations, the commission shall first determine whether a violation has occurred.

(2) If so, the commission shall then determine the amount of damages, if any, suffered by the aggrieved party or parties. However, damages shall be limited to actual damages in accordance with § 17-42-407.

(3) The commission shall then direct the licensee to pay that amount to the aggrieved party or parties.

(4) If that amount has not been paid within thirty (30) days following entry of the commission's final order in the matter and the order has not been appealed to the circuit court, then the commission shall pay, upon request, from the Real Estate Recovery Fund to the aggrieved party or parties the amount specified. However, the commission shall not:

(A) Pay in excess of twenty-five thousand dollars (\$25,000) for any one (1) violation or continuing series of violations, regardless of the number of licensees who participated in such a violation or continuing series of violations; or

(B) Pay an amount in excess of the fund balance.

(b) The question of whether or not certain violations constitute a continuing series of violations shall be a matter solely within the discretion and judgment of the commission.

(c) Nothing within this subchapter shall obligate the fund for any amount in excess of a total of seventy-five thousand dollars (\$75,000) with respect to:

(1) The acts of any one (1) licensee; or

(2) Any group of related claims.

(d) Whether or not a claim is one (1) of a group of related claims shall be a matter solely within the discretion and judgment of the commission.

(e) When unsatisfied or pending claims are such that they exceed the limits payable under subsection (c) of this section, the commission shall be the sole determinant of how the available funds shall be allocated among such claims.

History. Acts 1993, No. 690, § 22; 1997, No. 781, § 1; 2007, No. 263, §§ 9, 10.

A.C.R.C. Notes. Acts 1997, No. 781, § 2, codified as § 17-42-410, provided: "The increased limits provided by this § 17-42-406(a)(4)(A) shall apply only to acts or violations which occur after August 1, 1997. Any acts or violations which occur

prior to that date shall continue to be governed by the previous limits of ten thousand dollars (\$10,000)."

Amendments. The 2007 amendment substituted "twenty-five thousand dollars (\$25,000)" for "fifteen thousand dollars (\$15,000)" in (a)(4)(A), and "seventy-five thousand dollars (\$75,000)" for "fifty thousand dollars (\$50,000)" in (c).

CASE NOTES

ANALYSIS

Bankruptcy Proceedings.
Damages.

Bankruptcy Proceedings.

Nothing in the discharge injunction of the bankruptcy code, 11 U.S.C. § 524, prevents the Real Estate Commission from directing a licensee to pay amounts to aggrieved parties, and the very lan-

guage of prior provisions made it obligatory upon the commission to honor such a request to the extent provided under this subchapter. *Arkansas Real Estate Comm'n v. Veteto*, 303 Ark. 475, 798 S.W.2d 52 (1990).

Damages.

Prior similar provisions did not require the injured party to first file a complaint with the commission before the party is

entitled to damages. *Eckels v. Arkansas Real Estate Comm'n*, 30 Ark. App. 69, 783 S.W.2d 864 (1990).

Cited: *Keahey v. Plumlee*, 94 Ark. App. 121, 226 S.W.3d 31 (2006).

17-42-407. Jurisdiction.

(a) The Arkansas Real Estate Commission's jurisdiction and authority to award damages to an aggrieved party pursuant to § 17-42-406 is limited to actual, compensatory damages. The commission shall not award punitive or exemplary damages, nor shall it award interest on damages.

(b) Likewise, the appellate jurisdiction of the circuit court is limited to the awarding of actual, compensatory damages.

(c) The circuit court shall have no authority or jurisdiction to assess punitive or exemplary damages under this subchapter.

(d) The circuit court's jurisdiction over the Real Estate Recovery Fund shall be limited to appeals from the commission's orders.

(e) The circuit court shall have no jurisdiction or authority to order payments from the fund in any amount in excess of either:

- (1) The amount determined by the commission; or
- (2) The limits set forth in § 17-42-406.

History. Acts 1993, No. 690, § 22.

17-42-408. Appeal.

(a) An appeal may be taken to the circuit court from a final order of the Arkansas Real Estate Commission in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) An appeal shall automatically stay that portion of the commission's order which directs the payment of damages, and neither the licensee nor the commission shall be obligated to pay the damages to the aggrieved party or parties until such time as the appeal is finally decided, whether in the circuit court or in the Supreme Court.

History. Acts 1993, No. 690, § 22.

17-42-409. Subrogation — Suspension of license.

Upon the payment by the Arkansas Real Estate Commission of any amount of money under the provisions of § 17-42-406:

(1) The recipients of the payment, to the extent of the payment, shall assign to the commission all rights and claims that they may have against the licensee involved;

(2) The commission shall be subrogated to all of the rights of the recipients of the payment, to the extent of the payment; and

(3) In addition to any other disciplinary action taken against the licensee on the merits of the hearing, his or her license shall be immediately suspended until he or she has completely reimbursed the commission for the payment, plus interest at a rate to be determined by the commission. The rate shall not exceed ten percent (10%) per annum.

History. Acts 1993, No. 690, § 22.

17-42-410. Applicability of Acts 1997, No. 781.

The increased limits provided by § 17-42-406(a)(4)(A) shall apply only to acts or violations which occur after August 1, 1997. Any acts or violations which occur prior to that date shall continue to be governed by the previous limits of ten thousand dollars (\$10,000).

History. Acts 1997, No. 781, § 2.

A.C.R.C. Notes. References to “this subchapter” in §§ 17-42-401 to 17-42-409 may not apply to this section which was enacted subsequently.

References to “this chapter” in §§ 17-42-101 to 17-42-409 and §§ 17-42-501 to 17-42-603 may not apply to this section which was enacted subsequently.

SUBCHAPTER 5 — RENEWAL OF LICENSES

SECTION.

- 17-42-501. Renewal or reactivation requirements.
- 17-42-502. Curriculum.
- 17-42-503. Nonqualifying courses or events.

SECTION.

- 17-42-504. Qualifying courses.
- 17-42-505. Instructor credentials.
- 17-42-506. Credit — Certificate of attendance.
- 17-42-507. Monitoring courses.

Effective Dates. Acts 1995, No. 1285, § 8: became law without the Governor’s signature Apr. 12, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that it is necessary and desirable for the Arkansas Real Estate Commission to be granted the authority to increase fees in order to have sufficient funds with which to efficiently and effectively administer the laws and regulations pertaining to the licensure and

regulation of real estate brokers and salespersons and to effectively administer the continuing education requirements for such licensees, and that, therefore, immediate effect should be given to this measure. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

17-42-501. Renewal or reactivation requirements.

(a) As a condition precedent to renewal or activation of licenses, licensees shall meet the following requirements:

(1)(A) Licensees on inactive status are not required to comply with this subchapter during their inactive status.

(B) Prior to activation of a license on inactive status, the licensee shall satisfactorily complete six (6) classroom hours or equivalent continuing education units or equivalent correspondence work of continuing education for each year inactive not to exceed thirty (30) classroom hours. However, that will satisfy the requirements only for that particular license year and not for the following license year;

(2)(A)(i) Persons licensed as real estate brokers or salespersons shall successfully complete annually six (6) classroom hours or equivalent continuing education units or equivalent distance education of continuing education or a course that the Arkansas Real Estate Commission has determined demonstrates a mastery of an acceptable real estate subject.

(ii) No more than one (1) hour or equivalent continuing education unit shall be in a specific topic or topics as identified by the commission in § 17-42-502.

(B) Those persons shall be deemed to have successfully completed the continuing education requirements for the licensing year following the year in which first licensed in Arkansas; and

(3) A nonresident licensee may meet the Arkansas continuing education requirements by taking courses which meet the continuing education requirements of his or her resident state for the licensing year in question, provided that:

(A) The course or courses consist of no fewer than six (6) classroom hours or equivalent continuing education units of real estate-related subjects and otherwise comply with the minimum requirements of this subchapter; and

(B) Evidence of such compliance satisfactory to the commission is submitted in form, manner, and content prescribed by the commission.

(b) The commission may waive all or part of the requirements of subsection (a) of this section for any licensee who submits satisfactory evidence of inability to meet the continuing education requirements due to health reasons or other hardship or extenuating circumstances beyond the licensee's control.

(c) Licenses for persons who apply for renewal of their licenses and who do not provide to the commission evidence of meeting the continuing education requirements but who have otherwise met all requirements for license renewal shall be placed on inactive status until the evidence is provided to the commission.

History. Acts 1993, No. 690, § 23; 1995, No. 1285, § 2; 1999, No. 471, § 1; 2007, No. 263, § 11.

Publisher's Notes. Acts 1995, No. 1285 became law without the Governor's signature. Apr. 12, 1995.

Amendments. The 2007 amendment subdivided (a)(2)(A) into (a)(2)(A)(i) and

(ii); in (a)(2)(A)(i), substituted "distance education" for "correspondence work" and added "or a course ... real estate subject"; in (a)(2)(A)(ii), substituted "No more than" for "At least" and "commission" for "Arkansas Real Estate Commission"; and made a stylistic change.

17-42-502. Curriculum.

(a)(1) The Arkansas Real Estate Commission may establish the continuing education curriculum by identifying subject matter topics.

(2) The commission may identify a specific topic or topics of not more than one (1) hour to be included in the six-classroom-hour annual continuing education requirement.

(3) The commission shall not require licensees to complete specific courses within the subject matter topics.

(4) Changes in the curriculum shall be applicable beginning with the license renewal period subsequent to the curriculum change.

(b) The State Board of Private Career Education shall approve continuing education courses and may approve only those continuing education courses which meet the criteria prescribed by the commission. In establishing such criteria, the commission shall give due consideration to the advice and recommendations of the board.

(c) The board shall determine the classroom hour equivalency of correspondence courses.

History. Acts 1993, No. 690, § 23; 1999, No. 471, § 2.

17-42-503. Nonqualifying courses or events.

(a) The following do not qualify as continuing education:

(1) Courses of instruction designed to prepare a student for passing the real estate broker or salesperson examinations, except as provided in § 17-42-501(a);

(2) Sales promotions or other meetings held in conjunction with the general business of the licensee; and

(3) Time devoted to breakfasts, luncheons, and dinners.

(b) The same course may not be used to meet the continuing education requirement two (2) times during the same license year.

History. Acts 1993, No. 690, § 23; 2007, No. 263, § 12. deleted former (a)(2), and redesignated the following subdivisions accordingly.

Amendments. The 2007 amendment

17-42-504. Qualifying courses.

The following courses and their instructors are not required to obtain the approval of the State Board of Private Career Education in order to qualify as continuing education courses in this subchapter:

(1) Courses in real estate-related subjects offered by the National Association of Realtors, the National Association of Real Estate Brokers, or their societies, institutes, or councils;

(2) Courses in real estate-related subjects offered or approved by the Arkansas Real Estate Commission; and

(3) Courses of at least three (3) semester hours or equivalent in real estate subjects acceptable to the commission offered by colleges or universities.

History. Acts 1993, No. 690, § 23; 1995, No. 1285, § 3; 2007, No. 263, § 13.

Publisher's Notes. Acts 1995, No. 1285 became law without the Governor's signature. Apr. 12, 1995.

Amendments. The 2007 amendment inserted "or approved" in (2).

17-42-505. Instructor credentials.

- (a) Except as provided in this subchapter, instructors in continuing education courses shall file credentials with the State Board of Private Career Education showing the necessary specialized preparation, training, and experience to ensure competent and qualified instruction.
- (b) The board will prescribe instructor qualification credentials and education requirements based upon advice and recommendation of the Arkansas Real Estate Commission.

History. Acts 1993, No. 690, § 23; 1285 became law without the Governor’s signature. Apr. 12, 1995.
Publisher’s Notes. Acts 1995, No.

17-42-506. Credit — Certificate of attendance.

- (a) Credit shall be earned on the basis of attendance.
- (b)(1) A certificate of attendance which states the name of the student, the name of the school or sponsor of the course, the date the course was completed, the number of classroom hours of instruction covered by the individual course, and such other information as the Arkansas Real Estate Commission may require shall be presented to each attendee upon completion of the course.
- (2) No certificate of attendance shall be issued to a licensee who is absent for more than ten percent (10%) of the classroom hours.
- (3) Either a copy of the certificate or other proof of satisfactory completion of the course acceptable to the commission shall be furnished to the commission by the licensee.
- (4) It is the licensee’s responsibility to establish his or her successful completion of a continuing education course.

History. Acts 1993, No. 690, § 23.

17-42-507. Monitoring courses.

The Arkansas Real Estate Commission or its designee is authorized to attend and monitor any courses of instruction offered or to be offered as meeting the requirements of this chapter.

History. Acts 1993, No. 690, § 23.

SUBCHAPTER 6 — INTEREST ON TRUST ACCOUNTS PROGRAM

SECTION.	SECTION.
17-42-601. Establishment of program.	17-42-603. Disposition of funds.
17-42-602. Notice.	

17-42-601. Establishment of program.

- (a) The Arkansas Real Estate Commission is hereby authorized and empowered, subject to the following restrictions and limitations, to establish a program authorizing and permitting the collection of

interest on real estate brokers' trust accounts and the disbursement of the interest by the depository institutions involved to an Arkansas nonprofit corporation for use for such tax-exempt purposes as are hereinafter set forth.

(b) Participation in the program shall be completely voluntary with each broker rather than mandatory.

History. Acts 1993, No. 690, § 24.

17-42-602. Notice.

(a) All real estate brokers participating in the interest on real estate brokers' trust accounts program shall post a notice at least four inches by seven inches (4" x 7") stating that they participate in the interest on real estate brokers' trust accounts program.

(b) The notice shall be displayed prominently and shall contain information concerning the purposes for which the interest accumulating on the account shall be used, and shall state: "If funds belonging to you are deposited in this firm's trust account, any interest earned therefrom will be forwarded by the depository bank to a nonprofit organization which will dispense the funds to provide for economic development, research, education, and such other public service purposes as may be determined by the recipient corporation selected by the Arkansas Real Estate Commission."

History. Acts 1993, No. 690, § 24.

17-42-603. Disposition of funds.

(a)(1) The recipient of the funds generated by the interest on real estate brokers' trust account program shall be such Arkansas nonprofit corporation as the Arkansas Real Estate Commission shall designate.

(2) The corporation shall be governed by a board of directors consisting of not fewer than five (5) nor more than fifteen (15) members.

(3) At least sixty percent (60%) of the total number of directors shall be appointed by the commission and the remainder by the Arkansas Realtors Association.

(4) The corporation shall be tax exempt as defined by § 501(c)(3) of the Internal Revenue Code.

(b) The funds generated by the program shall be used for economic development, research, education, and such other public service purposes as may be determined by the recipient corporation specified in this section.

History. Acts 1993, No. 690, § 24.

U.S. Code. Section 501(c)(3) of the

Internal Revenue Code is codified as 26

U.S.C. § 501(c)(3).

SUBCHAPTER 7 — INTERFERENCE WITH REAL ESTATE LICENSEE RELATIONSHIPS

SECTION.

17-42-701. Definitions.

17-42-702. Interference with licensee relationships prohibited.

17-42-701. Definitions.

As used in this subchapter:

(1) “Actual introduction” means the referral of a principal to a licensee by the person or entity seeking the referral fee before the principal and licensee have engaged in material discussions regarding a specific real estate transaction;

(2)(A) “Interference with a licensee relationship” means:

(i) A demand for a referral fee from a licensee when reasonable cause for payment does not exist;

(ii) A threat to reduce, withhold, or eliminate any relocation or other benefits or the actual reduction, withholding, or elimination of any relocation or other benefit for the purpose of obtaining a referral fee from a licensee when reasonable cause for payment does not exist; or

(iii) An attempt to induce a principal to breach or terminate a representation agreement for the purpose of replacing that agreement with another representation agreement in order to obtain a referral fee.

(B) “Interference with a licensee relationship” does not mean:

(i) Communications between an employer or an employer’s representative and an employee concerning relocation policies and benefits if the communication does not involve advice about or encouragement to terminate or amend an existing representation agreement; and

(ii) Advice to a principal about the right to allow a licensee relationship to expire under its own terms or not to renew the licensee relationship upon its expiration;

(3) “Licensee relationship” means an agreement between a licensee and a principal under which the licensee agrees to act as a principal broker as defined in § 17-42-103;

(4) “Principal” means the buyer, seller, landlord, or tenant in a licensee relationship;

(5) “Reasonable cause for payment” means the creation of a cooperative or subagency relationship between licensees or a representation agreement as the result of an actual introduction of business;

(6)(A) “Referral fee” means any mutually agreed-upon fee, commission, or other consideration to be paid by a licensee to any person or entity.

(B) “Referral fee” does not mean a cooperative commission offered by a listing licensee to a selling licensee or by a selling licensee to a listing licensee; and

(7)(A) "Representation agreement" means an agreement between a principal and a licensee in which the licensee agrees to perform any of the activities of a principal broker.

(B) "Representation agreement" includes:

(i) A buyer's agency agreement, a property listing agreement, and a cooperative brokerage agreement; and

(ii) Any agreement containing any of the agreements described in subdivision (7)(B)(i) of this section.

History. Acts 2005, No. 1946, § 1.

17-42-702. Interference with licensee relationships prohibited.

(a) No person shall knowingly interfere with a licensee relationship between a licensee and a person or entity.

(b) No licensee shall be liable for a referral fee when reasonable cause for payment does not exist.

(c)(1) Any person or entity aggrieved by a violation of this subchapter may bring a civil action in any court of competent jurisdiction.

(2) The damages recoverable in an action under subdivision (c)(1) of this section shall be:

(A) The actual damages; and

(B) Reasonable attorney's fees and expenses.

(d) Nothing in this subchapter is intended to:

(1) Create a presumption that if reasonable cause for payment of a referral fee exists, a legal right to the referral fee exists; or

(2) Authorize the payment of a referral fee that is otherwise prohibited by law or regulation of the Arkansas Real Estate Commission.

History. Acts 2005, No. 1946, § 1.

CHAPTER 43

SANITARIANS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF SANITARIANS.
3. CERTIFICATE OF REGISTRATION.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-36-101 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

17-43-101. Definitions.

17-43-102. Penalties.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1957, No. 281, § 21; Mar. 27, 1957. Emergency clause provided: "It has been found and declared by the General Assembly of Arkansas that there is presently no agency in this state authorized to register sanitarians, that there are no established qualifications for sanitarians in this state, and that a sys-

tem for registration and qualification of sanitarians is necessary to protect the dignity of that profession and to protect the public from the practice of such profession by persons who are inexperienced and unqualified to practice. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from the date of its approval."

17-43-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Continuing education unit" means value given for participation in organized continuing education experience under reasonable sponsorship, capable direction, and qualified instruction approved by the Arkansas State Board of Sanitarians;

(2) "Environmental sanitation" means the study, art, and technique of applying scientific knowledge for the improvement of the environment of man for his health and welfare;

(3) "Registered sanitarian" means an environmental health professional educated in the field of environmental health, physical, and biological sciences who meets the requirements of §§ 17-43-303(a) and (b) and 17-43-306. Such persons may be specifically trained to organize, implement, and manage environmental health programs; and

(4) "Sanitarian-in-training" means a person who meets the educational qualifications as provided in this chapter but does not meet the experience requirements of this chapter for registration as a registered sanitarian.

History. Acts 1957, No. 281, § 1; 1985, No. 582, § 1; A.S.A. 1947, § 71-1601.

17-43-102. Penalties.

Any person who violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200) or by imprisonment not exceeding three (3) months, or by both

fine and imprisonment, and each day of violation shall constitute a separate offense.

History. Acts 1957, No. 281, § 20;
A.S.A. 1947, § 71-1620.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF SANITARIANS

SECTION.

17-43-201. Creation — Members.

17-43-202. Organization and proceedings.

17-43-203. Duties and powers.

SECTION.

17-43-204. Disposition of funds — Report.

17-43-205. Operating expenses.

17-43-206. Board seminars or workshops
— Travel expenses.

Effective Dates. Acts 1957, No. 281, § 21: Mar. 27, 1957. Emergency clause provided: "It has been found and declared by the General Assembly of Arkansas that there is presently no agency in this state authorized to register sanitarians, that there are no established qualifications for sanitarians in this state, and that a system for registration and qualification of sanitarians is necessary to protect the dignity of that profession and to protect the public from the practice of such profession by persons who are inexperienced and unqualified to practice. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from the date of its approval."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 152, § 7: July 1, 1983. Emergency clause provided: "It is hereby

found and determined by the Seventy-Fourth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this act are provided; and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the

period of time during which the Governor shall become effective on the date the last
may veto the bill. If the bill is vetoed by house overrides the veto.”
the Governor and the veto is overridden, it

17-43-201. Creation — Members.

(a)(1) There is created the Arkansas State Board of Sanitarians to consist of six (6) members who shall be appointed by the Governor.

(2)(A) Five (5) members shall be sanitarians who have been residents in the State of Arkansas for at least one (1) year, have had experience in the field of environmental sanitation for at least five (5) years, are presently engaged in the field of environmental sanitation, and are not less than thirty (30) years of age. Each shall hold a current certificate of registration issued by the board.

(B) Terms of office shall be fixed so that one (1) professional member of the board will be retired each year.

(C) The Governor shall fill the expired term of the retiring board member by choosing one (1) nominee from a list of three (3) names which shall be submitted to him or her each year by the Arkansas Society of Professional Sanitarians.

(3) One (1) member shall not be actively engaged in or retired as a sanitarian and shall represent consumers. This member shall be appointed from the state at large subject to confirmation by the Senate. He or she shall be a full voting member but shall not participate in the grading of examinations.

(b) Each member shall be appointed for a five-year period except for a person who is appointed to fill the unexpired term of another member. The term of office shall expire on June 30 of each year.

(c) The Governor shall fill any vacancy caused by death, resignation, or removal for the unexpired term.

(d) The Governor may remove any member of the board for misconduct, incapacity, or neglect of duty.

(e) The members of the board shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1957, No. 281, §§ 3, 4; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1985, No. 582, § 2; A.S.A. 1947, §§ 6-617 — 6-619, 71-1603, 71-1604; Acts 1997, No. 250, § 148.

§ 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

A.C.R.C. Notes. Acts 1981, No. 717,

17-43-202. Organization and proceedings.

(a) The Arkansas State Board of Sanitarians shall hold a meeting at least one (1) time a year and at such times as the chair of the board shall appoint.

(b) At the first meeting and annually thereafter, the board shall elect a chair and a secretary from its members appointed by the Governor.

(c) Three (3) members shall constitute a quorum, but no action may be taken on any questions unless at least three (3) members are in accord.

(d) The board shall adopt and have an official seal which shall be affixed to all certificates of registration.

History. Acts 1957, No. 281, §§ 4, 5;
A.S.A. 1947, §§ 71-1604, 71-1605.

17-43-203. Duties and powers.

(a) The Arkansas State Board of Sanitarians shall have such authority as is reasonably necessary to administer this chapter.

(b) The chair and the secretary of the board may administer oaths and subpoena witnesses.

(c) The secretary shall keep a record of all proceedings of the board, including a register of all holders of a current certificate of registration. These records shall be open to the public at all reasonable times.

(d) The board may employ and fix the compensation of assistants, clerks, stenographers, typists, and other employees to serve at the pleasure of the board, and acquire office space, furniture, supplies, equipment, and other proper conveniences reasonably necessary for the performance of their duties under this chapter.

(e) As a means to maintain professional competency, the board shall promulgate rules and regulations establishing standards for continuing education. The continuing education units shall be direct participation in a course or courses approved by the board. The standards shall be established in a manner to assure that a variety of alternative forms of continuing education are available to registered sanitarians, including, but not limited to, academic studies, in-service education, institutes, seminars, lectures, conferences, workshops, extension courses, home study programs, articles published, and scientific papers published. The standards should recognize specialized areas of endeavor. The board may contract with another agency or association to perform part or all of the duties in establishing procedures to record and retain continuing education units data for all registered sanitarians in good standing.

(f) The board shall have power to determine all matters within its jurisdiction, subject to review of the circuit court or at the option of the aggrieved party by the circuit court of the county in which he or she resides.

History. Acts 1957, No. 281, §§ 6, 19;
1985, No. 582, § 3; A.S.A. 1947, §§ 71-
1606, 71-1619.

17-43-204. Disposition of funds — Report.

- (a) All fees or payments of any type collected by the Arkansas State Board of Sanitarians under this chapter shall be kept in a separate fund.
- (b) The board shall make a report annually to the Governor showing all receipts and disbursements of moneys and a summary of all business transacted during the year.
- (c) The expenses provided in this chapter shall be paid by the board from the fees collected by it.

History. Acts 1957, No. 281, § 16; A.S.A. 1947, § 71-1616; Acts 1997, No. 250, § 149.

17-43-205. Operating expenses.

The operating expenses of the Arkansas State Board of Sanitarians shall be paid solely from cash funds of the board, and no funds shall be used either directly or indirectly from general revenues for such support.

History. Acts 1983, No. 152, § 2.

17-43-206. Board seminars or workshops — Travel expenses.

The Arkansas State Board of Sanitarians may authorize payments to be made to each registered sanitarian as partial reimbursement for actual travel expenses incurred, but not to exceed the amounts authorized for state employees for such expenses and not otherwise reimbursed, in attending seminars or workshops sponsored by the board in accordance with state travel regulations.

History. Acts 1983, No. 152, § 3; A.S.A. 1947, § 71-1621.

SUBCHAPTER 3 — CERTIFICATE OF REGISTRATION

SECTION.	SECTION.
17-43-301. Certificate required.	17-43-307. Reciprocity.
17-43-302. Examination — Scope.	17-43-308. Expiration and renewal.
17-43-303. Application for examination.	17-43-309. Grounds for suspension, revocation, or refusal to renew.
17-43-304. Notice of time and place of examination.	17-43-310. Proceedings for suspension, revocation, or refusal to renew.
17-43-305. Notice of examination results.	
17-43-306. Issuance.	

Effective Dates. Acts 1957, No. 281, § 21: Mar. 27, 1957. Emergency clause provided: "It has been found and declared by the General Assembly of Arkansas that

there is presently no agency in this state authorized to register sanitarians, that there are no established qualifications for sanitarians in this state, and that a sys-

tem for registration and qualification of sanitarians is necessary to protect the dignity of that profession and to protect the public from the practice of such profession by persons who are inexperienced and unqualified to practice. Therefore, an

emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from the date of its approval."

17-43-301. Certificate required.

(a) No person shall offer his or her service as a registered sanitarian or use, assume, or advertise in any way any title or description tending to convey the impression that he or she is a registered sanitarian unless he or she is the holder of a current certificate of registration issued by the Arkansas State Board of Sanitarians.

(b) A holder of a current certificate of registration may append to his or her name the letters "R.S."

History. Acts 1957, No. 281, § 2; A.S.A. 1947, § 71-1602.

17-43-302. Examination — Scope.

(a) The Arkansas State Board of Sanitarians shall hold examinations to test the fitness of applicants for registration at such times and places within this state as the board shall determine, but shall hold at least one (1) examination every year.

(b) The scope of the examination shall be determined by the board.

History. Acts 1957, No. 281, § 7; A.S.A. 1947, § 71-1607.

17-43-303. Application for examination.

(a) The Arkansas State Board of Sanitarians shall admit to examination any person who makes application to the Secretary of the Arkansas State Board of Sanitarians on forms prescribed and furnished by the board, pays an application fee of twenty dollars (\$20.00) to defray the expense of examination, and submits evidence satisfactory to the board that he or she is of good moral character.

(b) The minimum requirements for admission to examination as a registered sanitarian shall be as follows:

(1) A bachelor's degree or master's degree in public health with specialization in sanitary sciences from an approved school of public health; or

(2) A college graduate in one (1) of the natural sciences, i.e., biology, chemistry, physics, math, earth science, or geology, or engineering, with a minimum of thirty (30) semester hours or its equivalent of those subjects, plus one (1) year's experience in environmental sanitation or approved training courses.

(c) Any person who meets the educational qualifications of subdivision (b)(2) of this section but who does not meet the experience requirements of that subdivision may make application to the board through a process prescribed by the board for acceptance as a sanitarian-in-training. The board shall accept the application when submitted, if accompanied by the required fee, not to exceed ten dollars (\$10.00), as prescribed by the board.

(d) Within ninety (90) days after an application is filed with the secretary, the board shall notify the applicant whether his or her application for examination was accepted or rejected and, if rejected, the reason therefor.

(e) One-half ($\frac{1}{2}$) of the application fee shall be returned to each rejected applicant.

History. Acts 1957, No. 281, §§ 8, 9; A.S.A. 1947, §§ 71-1608, 71-1609; Acts 1977, No. 257, § 1; 1985, No. 582, § 4; 1993, No. 1219, § 11.

17-43-304. Notice of time and place of examination.

The Secretary of the Arkansas State Board of Sanitarians shall give reasonable notice by mail of the time and place of examination to each applicant accepted for examination.

History. Acts 1957, No. 281, § 10; A.S.A. 1947, § 71-1610.

17-43-305. Notice of examination results.

Within sixty (60) days after the examination is given, the Arkansas State Board of Sanitarians shall notify by mail each person who took the examination as to whether he or she has passed or failed the examination.

History. Acts 1957, No. 281, § 11; A.S.A. 1947, § 71-1611.

17-43-306. Issuance.

Each person who passes the examination to the satisfaction of the Arkansas State Board of Sanitarians shall be issued a certificate of registration upon payment of a registration fee of ten dollars (\$10.00).

History. Acts 1957, No. 281, § 12; 1985, No. 582, § 5; A.S.A. 1947, § 71-1612.

17-43-307. Reciprocity.

The Arkansas State Board of Sanitarians shall issue a certificate of registration without examination to any person who makes application on forms prescribed and furnished by the board, pays a registration fee of ten dollars (\$10.00), and submits satisfactory proof that he or she:

- (1) Is of good moral character;
- (2) Has had at least two (2) years' experience in the field of environmental sanitation; and
- (3) Is registered as a sanitarian in a state in which the qualifications for registration are not lower than the qualifications for registration in this state at the time he or she applies for registration.

History. Acts 1957, No. 281, § 14;
A.S.A. 1947, § 71-1614.

17-43-308. Expiration and renewal.

Each certificate of registration issued by the Arkansas State Board of Sanitarians shall expire on June 30 following the date of issuance. A renewal certificate may be issued:

- (1) To the holder of a current certificate of registration who makes application prior to the expiration of his or her current certificate and pays a renewal fee of twenty dollars (\$20.00). Satisfactory proof of complying with the board's continuing education requirements must accompany renewal applications; and
- (2) To a former registered sanitarian whose certificate has been suspended or revoked, who makes application not more than sixty (60) days after the expiration date of the last certificate issued to him or her, and who pays a renewal fee of forty dollars (\$40.00) and complies with continuing education requirements.

History. Acts 1957, No. 281, § 15;
1977, No. 257, § 3; 1985, No. 582, § 6;
A.S.A. 1947, § 71-1615.

17-43-309. Grounds for suspension, revocation, or refusal to renew.

The Arkansas State Board of Sanitarians may refuse to renew or may suspend or revoke a certificate upon proof that the applicant:

- (1) Is not of good character; or
- (2) Is guilty of fraud, deceit, gross negligence, incompetency, or misconduct in relation to his or her duties as a sanitarian.

History. Acts 1957, No. 281, § 17;
A.S.A. 1947, § 71-1617.

17-43-310. Proceedings for suspension, revocation, or refusal to renew.

(a) Before the Arkansas State Board of Sanitarians may suspend, revoke, or refuse to renew a certificate of registration, it shall set the matter for a hearing before the board.

(b) At least twenty (20) days prior to the date set for hearing, the board shall give written notice of the charges made and the date and place of the hearing to the accused.

(c) Service of the notice may be made by personal service or by sending it by registered mail to the last known business address of the accused.

(d) The accused shall have the opportunity to be heard in person and by counsel.

(e) A stenographic record of the hearing shall be kept and a transcript of the hearing filed with the board.

(f) The order of the board shall be made within thirty (30) days after the termination of the hearing.

(g) Notice of the order of the board shall be given to the accused, either by personal service or by registered mail sent to the last known business address of the accused within ten (10) days after the order is made.

History. Acts 1957, No. 281, § 18;
A.S.A. 1947, § 71-1618.

CHAPTER 44

SCRAP METAL DEALERS

SECTION.

17-44-101. Definitions.

17-44-102. Records required.

17-44-103. Restrictions on the purchase
of certain items.

SECTION.

17-44-104. Theft notification.

17-44-105. Sales by minors.

17-44-106. Penalties.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-37-101 et seq.

Cross References. Buyers of precious metals, § 17-23-101 et seq.

Effective Dates. Acts 1975, No. 583, § 6: Mar. 27, 1975. Emergency clause provided: "The General Assembly hereby finds and declares that theft of copper wire of the type described in section 1 of this act is steadily and consistently increasing; that enactment of the measure is urgently needed to serve as a deterrent to such thefts and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from the date of its approval."

Acts 1975, No. 894, § 5: Apr. 7, 1975. Emergency clause provided: "It is hereby

found and determined by the General Assembly that a problem exists with persons stealing, removing and carrying away bronze cemetery vases or receptacles and other bronze cemetery memorials from graves within cemeteries in this state and selling such bronze vases or memorials to dealers in junk for the secondhand value of the metal content of such vases and other memorials, and that because said objects may be readily changed in form it is impossible to trace the persons selling such stolen objects unless a proper registry is kept by the person, persons or firm purchasing said cemetery vases, memorials or statuary. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in effect from the date of its passage and approval."

17-44-101. Definitions.

As used in this chapter:

- (1) "Beverage container" means a can, bottle, jar, or other container made of aluminum or metal that is sealed by a manufacturer;
- (2) "Minor" means a person under eighteen (18) years of age;
- (3)(A) "Nonferrous metal" means a metal that does not contain significant quantities of iron or steel.
 - (B) "Nonferrous metal" includes without limitation the following metals and their alloys:
 - (i) Copper;
 - (ii) Brass;
 - (iii) Aluminum;
 - (iv) Bronze;
 - (v) Lead;
 - (vi) Zinc; and
 - (vii) Nickel;
- (4) "Person" means an individual, a partnership, a corporation, a joint venture, a trust, an association, or any other legal entity;
- (5) "Record" means paper, electronic, or other method of storing information;
- (6) "Scrap metal" means bits and pieces of metal parts that may be combined together with bolts or soldering and can be recycled when worn or superfluous;
- (7) "Scrap metal processor" means a person that, from a fixed location, engages in the business of using machinery or equipment for the processing or manufacturing of iron, steel, or nonferrous metal scrap;
- (8)(A) "Scrap metal recycler" means any person that purchases scrap metal.
 - (B) "Scrap metal recycler" does not include a person that only buys in quantities of five thousand pounds (5,000 lbs.) or more; and
- (9)(A) "Seller" means any person that receives in a transaction monetary consideration from a scrap metal recycler in exchange for nonferrous metal, iron, or steel, including without limitation copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys.
 - (B) "Seller" does not include a person that sells scrap metal generated in a manufacturing or production process and sold to a scrap metal recycler under a contract or an agreement.

History. Acts 1953, No. 139, §§ 1-3; 1957, No. 240, § 1; A.S.A. 1947, §§ 71-1501 — 71-1503; Acts 1991, No. 669, § 1; 2005, No. 1994, § 227; 2007, No. 749, § 1.

Amendments. The 2007 amendment rewrote the section.

17-44-102. Records required.

(a)(1) Each scrap metal recycler doing business in the State of Arkansas shall maintain an accurate and legible record of each scrap metal purchase transaction.

(2) Individual records shall not be required for a series of scrap metal purchase transactions made under a contract.

(3) The data required under subdivision (b)(1) of this section may be maintained for repeat sellers in a relational database allowing the scrap metal recycler to record the information one (1) time and relate future purchase records to that information.

(4) A municipality or county may require by ordinance electronic or digital records and reporting methods.

(b) The record of each scrap metal purchase transaction shall contain the following information taken at the time of sale and kept on record:

(1) The name, address, gender, birth date, and identifying number from the seller's driver's license, military identification card, passport, or other form of government-issued photo identification;

(2) A photocopy of the government-issued photo identification provided under subdivision (b)(1) of this section;

(3) The date of the scrap metal purchase transaction;

(4) The digital thumbprints of the seller;

(5)(A) A general description of the predominant types of scrap metal purchased.

(B) The general description shall be made in accordance with the custom of the trade;

(6) A general description of the configuration of the scrap metal and whether the material is insulated;

(7) The weight, quantity, or volume, recorded in accordance with the custom of the trade, of the scrap metal purchased;

(8) The consideration paid;

(9) The license plate number of the vehicle used in transporting the materials to the scrap metal recycler's place of business; and

(10) A date-and-time-stamped digital photograph of the:

(A) Seller; and

(B) Scrap metal in the form in which it was purchased.

(C) The name of the person taking the photographs under subdivision (b)(10)(A) of this section shall be recorded and provided with the photographs.

(c) The photocopy required under subdivision (b)(2) of this section, the digital thumbprints required under subdivision (b)(4) of this section, and the digital photographs taken required under subdivision (b)(10)(A) of this section shall be reasonably clear.

(d)(1) For records required under subsection (b) of this section, a scrap metal recycler shall file a daily electronic record of scrap metal purchases made for that day.

(2) The report shall be made daily by entering the information into an automated database which may be interfaced by law enforcement statewide.

(e) A seller shall provide the following to a purchaser:

(1) A copy of a valid driver's license, military identification card, passport, or other form of government-issued photo identification;

(2) A signed statement that the seller is the owner or is otherwise authorized to sell the scrap metal; and

(3) A general description of where and how the seller acquired the scrap metal.

(f) The records required under this section shall be:

(1) Kept for a period of one (1) year;

(2) Made available to any law enforcement office of the State of Arkansas and any Arkansas municipality or county; and

(3) Available for use in any legal proceeding.

(g) This section shall not apply to transactions:

(1) In which a scrap metal processor purchases, transfers, or otherwise conveys scrap metal to another scrap metal processor if the purchaser or transferee obtained a bill of sale or similar document at the time of transfer;

(2) Involving only beverage or food containers; or

(3) Involving only ferrous metals.

History. Acts 1969, No. 148, §§ 1-3; A.S.A. 1947, §§ 71-1501.1 — 71-1501.3; Acts 2005, No. 1994, § 399; 2007, No. 749, § 2; 2009, No. 390, § 2.

Amendments. The 2007 amendment rewrote the section.

The 2009 amendment inserted (a)(3) and (a)(4), deleted (b)(1)(B), inserted (b)(2), (b)(4), (b)(9), (b)(10), (c), (d), (e)(3), and (g)(3), and redesignated the remain-

ing subsections and subdivisions accordingly; deleted “in excess of one hundred pounds (100 lbs.) or fifty dollars (\$50.00), whichever is less” following “transaction” in (a)(1); inserted “taken at the time of sale and kept on record” in (b); inserted “valid” in (e)(1); inserted “or food” in (g)(2); and made related and minor stylistic changes.

17-44-103. Restrictions on the purchase of certain items.

(a) A seller shall not sell and a scrap metal recycler shall not purchase the following scrap metal unless reasonable, written documentation is provided that the seller is the owner of the scrap metal or is an employee, agent, or other person authorized to sell the scrap metal on behalf of the owner:

(1) Scrap metal marked with the initials of an electrical company, a telephone company, a cable company, another public utility, or a brewer;

(2) Utility access covers;

(3) Street light poles and fixtures;

(4) Road and bridge guard rails;

(5) Highway or street signs;

(6) Water meter covers;

(7) Metal beer kegs including those made of stainless steel that are clearly marked as being the property of the beer manufacturer;

(8) Traffic directional and control signs;

(9) Traffic light signals;

(10) Any scrap metal marked with the name of a government entity;

(11) Property owned by a telephone company, a cable company, an electric company, a water company, or another utility or by a railroad and marked or otherwise identified as such;

(12) Unused and undamaged building construction or utility materials consisting of copper, pipe, tubing or wiring, or aluminum wire, historical markers, or grave markers and vases;

- (13) Catalytic converters that are not part of an entire motor vehicle;
- (14) Scrap metal that has been smelted, burned, or melted;
- (15) Air conditioning parts unless:

- (A) The parts are being sold by a contractor, plumber, or electrician;

- (B) A current and valid HVAC license is provided at the time of the sale; and

- (C) A copy of the HVAC license number is recorded by the purchaser of the scrap metal; and

- (16) Any scrap metal that has been brightly painted or marked to deter theft of the scrap metal.

(b)(1) A scrap metal recycler shall not make a cash payment to a seller known by the recycler to have pleaded guilty or nolo contendere to or to have been found guilty of theft, burglary, or vandalism when the offense involved scrap metal.

(2) Payments to a seller who has pleaded guilty or nolo contendere to or has been found guilty of theft, burglary, or vandalism where the offense involved scrap metal shall be made in the following manner:

- (A) A check mailed to the seller; or

- (B) An electronic funds transfer initiated no earlier than three (3) days after the date of the transaction.

(3) A scrap metal recycler shall request a list of persons who have pleaded guilty or nolo contendere to or have been found guilty of theft, burglary, or vandalism when the offense involved scrap metal from the appropriate law enforcement agency.

(c) This section does not apply to transactions in which a scrap metal processor purchases, transfers, or otherwise conveys scrap metal to another scrap metal processor.

History. Acts 1975, No. 583, §§ 1-3; A.S.A. 1947, §§ 71-1501.4 — 71-1501.6; Acts 1991, No. 669, § 1; 2005, No. 1994, § 228; 2007, No. 749, § 3; 2009, No. 390, § 3.

Amendments. The 2007 amendment rewrote the section.

The 2009 amendment inserted (a)(13) through (a)(16), inserted (b), redesignated the subsequent subsection accordingly, and made related and minor stylistic changes.

17-44-104. Theft notification.

(a) Any person may notify scrap metal recyclers of nonferrous metal of a known or presumed theft of nonferrous metal products setting forth any information concerning the theft as might be available to that person, including without limitation:

- (1) The approximate quantity and size of the nonferrous metal products stolen;

- (2) The geographical area from which the nonferrous metal products were reported missing or presumed stolen; and

- (3) Any specific distinguishing marks on or in the nonferrous metal products or other method of identifying the nonferrous metal products.

(b) If notice of a known or presumed theft of nonferrous metal products is given to a scrap metal recycler under subsection (a) of this section and within ninety (90) days after the notice nonferrous metal products meeting the description in the notice are purchased by the scrap metal recycler or offered for sale to the scrap metal recycler, then the scrap metal recycler shall notify the local police or sheriff's department that the nonferrous metal products were purchased by or offered for sale to the scrap metal recycler.

(c) This section does not apply to transactions that involve only beverage containers.

History. Acts 1975, No. 894, §§ 1-3; A.S.A. 1947, §§ 71-1504 — 71-1506; Acts 1991, No. 669, § 1; 2005, No. 1994, § 228; 2007, No. 749, § 4.

Amendments. The 2007 amendment rewrote the section.

17-44-105. Sales by minors.

(a)(1) No scrap metal recycler shall purchase or otherwise receive in the course of business scrap metal that is claimed by any minor or that may be in the possession of or under control of a minor, unless the minor is accompanied by his or her parent or guardian.

(2) The parent or guardian shall state in writing that the transaction is taking place with the parent's or guardian's full knowledge and consent.

(b) A scrap metal recycler shall preserve and keep on file and make available for inspection the written statement required by subsection (a) of this section for not less than three (3) years.

History. Acts 1989, No. 476, §§ 1-4; 1991, No. 669, § 1; 2005, No. 1994, § 400; 2007, No. 749, § 5.

section (a) began: "On and after July 3, 1989,".

Publisher's Notes. As originally enacted by Acts 1989, No. 476, §§ 1-4, sub-

Amendments. The 2007 amendment rewrote the section.

17-44-106. Penalties.

(a) Any person that fails to comply with this chapter is guilty of a Class A misdemeanor.

(b) Any person that knowingly gives false information with respect to the matters required to be maintained in the records provided for in this chapter is guilty of a Class A misdemeanor.

History. Acts 2007, No. 749, § 6; 2009, No. 390, § 4.

substituted "Class A" for "Class B" in (a) and (b).

Amendments. The 2009 amendment

CHAPTER 45

SEPTIC TANK CLEANERS

SECTION.

- 17-45-101. Penalties.
- 17-45-102. Rules and regulations.
- 17-45-103. Licensing — Fees — Transfer
of unexpended funds.

SECTION.

- 17-45-104. Customer receipt.
- 17-45-105. Disposition of fees.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-38-101 et seq.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1987, No. 740, § 3: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to cur-

rent economic conditions, budgetary constraints may limit the ability of the Department of Health to adequately provide needed services unless some license fees are increased; that it is most equitable to make this increase effective July 1, 1987. Therefore, an emergency is hereby declared to exist and this Act shall become effective July 1, 1987."

17-45-101. Penalties.

Any person who shall engage in the business of cleaning septic tanks without having complied with the provisions of this chapter or who shall fail or refuse to comply with the provisions of this chapter shall be guilty of a misdemeanor. Upon conviction that person shall be fined not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200) or imprisoned not more than thirty (30) days, or both.

History. Acts 1973, No. 71, § 5; A.S.A. 1947, § 71-2505.

17-45-102. Rules and regulations.

The Department of Health shall promulgate rules and regulations for the administration of this chapter, including the collection of the fee provided for in § 17-45-103.

History. Acts 1973, No. 71, § 4; A.S.A. 1947, § 71-2504.

17-45-103. Licensing — Fees — Transfer of unexpended funds.

(a) No person, firm, corporation, partnership, or association shall engage in the business of septic tank cleaning for compensation without first obtaining a license as provided in this section.

(b) Any person, firm, corporation, partnership, or association desiring to obtain a license for engaging in the business of septic tank cleaning shall make application to the Department of Health and shall

prove to the satisfaction of the Director of the Department of Health, or his or her representative, that he or she is morally and financially responsible.

(c) The license required by this chapter shall be valid for one (1) year from the date of issue and shall bear an identifying number. An annual fee of twenty-five dollars (\$25.00) shall be charged for issuance of the license.

(d) In addition to this annual licensure fee, an annual fee of twenty-five dollars (\$25.00) shall be charged for every tank pumper vehicle above the first vehicle owned by the person, firm, corporation, partnership, or association in the business of septic tank cleaning which is used in the operation of that business.

(e) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds relative to septic tank cleaners' licenses that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1973, No. 71, § 1; A.S.A. 1947, § 71-2501; Acts 1987, No. 740, § 1.

17-45-104. Customer receipt.

Any owner or employee of a business licensed under this chapter, upon performing any work for which the business receives compensation, shall place his or her name and the number of the license issued to the business pursuant to this chapter on the customer's receipt.

History. Acts 1973, No. 71, § 2; A.S.A. 1947, § 71-2502.

17-45-105. Disposition of fees.

All fees levied and collected under the provisions of this chapter are declared to be special revenues and shall be deposited in the State Treasury and credited to the General Account of the Public Health Fund or any successor fund, fund account, or account.

History. Acts 1973, No. 71, § 3; A.S.A. 1947, § 71-2503.

CHAPTER 46

SOCIAL WORKERS

SECTION.

17-46-101 — 17-46-307. [Repealed.]

17-46-101 —17-46-307. [Repealed.]

Publisher’s Notes. This chapter was repealed by Acts 1999, No. 1122, § 2. The chapter was derived from the following sources:

- 17-46-101. Acts 1981, No. 791, § 1; A.S.A. 1947, § 71-2801.
- 17-46-102. Acts 1981, No. 791, § 2; A.S.A. 1947, § 71-2802.
- 17-46-103. Acts 1981, No. 791, § 3; A.S.A. 1947, § 71-2803.
- 17-46-104. Acts 1981, No. 791, §§ 3, 4; A.S.A. 1947, §§ 71-2803, 71-2804; Acts 1987, No. 760, § 1.
- 17-46-105. Acts 1981, No. 791, § 16; A.S.A. 1947, § 71-2816.
- 17-46-106. Acts 1981, No. 791, § 19; A.S.A. 1947, § 71-2819.
- 17-46-107. Acts 1981, No. 791, § 15; A.S.A. 1947, § 71-2815.
- 17-46-108. Acts 1991, No. 967, § 2; 1992 (1st Ex. Sess.), No. 72, § 4.
- 17-46-201. Acts 1981, No. 791, §§ 9, 11; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 71-2809, 71-2811; Acts 1997, No. 250, § 150.

- 17-46-202. Acts 1981, No. 791, §§ 10, 11; A.S.A. 1947, §§ 71-2810, 71-2811.
- 17-46-203. Acts 1981, No. 791, § 10; A.S.A. 1947, § 71-2810.
- 17-46-204. Acts 1981, No. 791, § 10; A.S.A. 1947, § 71-2810.
- 17-46-205. Acts 1981, No. 791, § 10; A.S.A. 1947, § 71-2810; Acts 1989, No. 40, § 1; 1995, No. 575, § 1.
- 17-46-301. Acts 1981, No. 791, §§ 6, 7; A.S.A. 1947, §§ 71-2806, 71-2807.
- 17-46-302. Acts 1981, No. 791, § 13; A.S.A. 1947, § 71-2813.
- 17-46-303. Acts 1981, No. 791, § 12; A.S.A. 1947, § 71-2812; Acts 1995, No. 575, § 2.
- 17-46-304. Acts 1981, No. 791, § 14; A.S.A. 1947, § 71-2814.
- 17-46-305. Acts 1981, No. 791, §§ 17, 18; A.S.A. 1947, §§ 71-2817, 71-2818; Acts 1997, No. 1317, § 6.
- 17-46-306. Acts 1981, No. 791, § 5; A.S.A. 1947, § 71-2805; Acts 1997, No. 1317, § 7.
- 17-46-307. Acts 1997, No. 1317, § 8.

CHAPTER 47
SOIL CLASSIFIERS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS STATE BOARD OF REGISTRATION FOR PROFESSIONAL SOIL CLASSIFIERS.
- 3. REGISTRATION AND CERTIFICATION.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-40-101 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-47-101. Definitions.
- 17-47-102. Penalties.

SECTION.

- 17-47-103. Exemptions.

17-47-101. Definitions.

As used in this chapter:

(1) "Kind of soil" means a group of natural bodies that has a discrete combination of landscape, morphological, chemical, and physical properties;

(2)(A) "Practice of soil classifying" or "practice of professional soil classifying":

(i) Means any service or work, the adequate performance of which requires education in the physical, chemical, biological, and soil sciences; training and experience in the application of the special knowledge of these sciences to soil classification; the soil classification by accepted principles and methods; investigation, evaluation, and consultation on the effect of measured, observed, and inferred soil properties upon the various uses; the preparation of soil descriptions, maps, and reports and interpretive drawings, maps, and reports of soil properties; the effect of soil properties upon the various uses; and the effect of the various uses upon kinds of soil, any of which embraces service or work either public or private incidental to the practice of soil classifying. A person shall be construed to practice or offer to practice soil classifying within the meaning and intent of this chapter who by verbal claim, sign, advertisement, letterhead, card, or use of some other title represents himself or herself to be a soil classifier; and

(ii) Does not mean or include the practice of soil classifying by persons exempt under the provisions of § 17-47-103, the work ordinarily performed by persons who sample and test soil for fertility status or construction materials, and engineering surveys and soundings to determine soil properties influencing the design and construction of engineering and architectural projects.

(B) Notwithstanding the foregoing provisions, a person shall not be construed to practice soil classifying unless he or she offers soil classifying services to, or performs soil classifying for, the public;

(3) "Professional soil classifier" means a person who, by reason of his or her special knowledge of the physical, chemical, and biological sciences applicable to soils as natural bodies and of the methods and principles of soil classification experienced in the formation, morphology, description, and mapping of soils, is qualified to practice soil classifying, and who has been registered by the Arkansas State Board of Registration for Professional Soil Classifiers;

(4) "Soil" means all of the groups of natural bodies occupying the unconsolidated portion of the earth's surface capable of supporting plant life and having properties due to the combined effect of climate and living organisms, as modified by topography and time, upon parent materials;

(5) "Soil classification" means plotting the boundaries, describing, and evaluating the kinds of soil as to their behavior and response to management under the various uses;

(6) "Soil classifier" means a professional soil classifier as defined in subdivision (3) of this section; and

(7) "Soil classifier-in-training" means a person who complies with the requirements for education and character and who has passed an examination in the fundamental soil and related subjects as provided for in §§ 17-47-304 and 17-47-305.

History. Acts 1975, No. 460, § 2; A.S.A. 1947, § 71-2702.

17-47-102. Penalties.

(a) Each of the following shall be guilty of a misdemeanor and shall, for each offense of which he or she is convicted, be punished by a fine of not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200):

(1) Any person who:

(A) Practices or offers to practice professional soil classifying in this state without being registered in accordance with the provisions of this chapter;

(B) Attempts to use an expired or revoked or nonexistent certificate of registration;

(C) Falsely claims that he or she is registered under this chapter;

(D) Presents or attempts to use the certificate of registration of another;

(E) Falsely impersonates any other registrant of like or different names;

(F) Gives false or forged evidence of any kind to the Arkansas State Board of Registration for Professional Soil Classifiers or to any member thereof in obtaining or attempting to obtain a certificate of registration; or

(G) Practices or offers to practice when not qualified;

(2) Any person, firm, partnership, organization, association, corporation, or other entity using or employing the words "soil classifier" or "professional soil classifier" or any modification or derivative thereof in its name or form of business or activity except as authorized in this chapter; or

(3) Any person, partnership, corporation, or other entity who shall violate any of the provisions of this chapter.

(b) Each violation and each day of any violation shall constitute a separate offense.

History. Acts 1975, No. 460, § 20; A.S.A. 1947, § 71-2720.

17-47-103. Exemptions.

This chapter shall not be construed to prevent or affect:

(1) The practice or offer to practice of soil classifying by a person not a resident or having no established place of business in this state,

provided that the person is legally qualified by the provisions of this chapter to practice soil classifying as defined in this chapter in his or her own state which extends similar privileges to persons registered under this chapter and provided that the person shall make application accompanied by the appropriate application fee to the Arkansas State Board of Registration for Professional Soil Classifiers in writing prior to his or her practicing or offering to practice soil classifying. The applicant may be granted a temporary permit for a definite period of time not to exceed one (1) year to do a specific job. However, no right to practice soil classifying shall accrue to the applicant with respect to any other work not set forth in the permit;

(2) The work of an employee or a subordinate of a person holding a certificate or registration under this chapter or an employee of a person practicing lawfully under subdivision (1) of this section, provided that the work does not include final soil classifying decisions and is done under the direct supervision of, and verified by, a person holding a certificate of registration under this chapter or a person practicing lawfully under subdivision (4) of this section;

(3) The practice of any other legally recognized profession or trade; or

(4) The practice of soil classifying by any person regularly employed to perform soil classifying services solely for his or her employer or for a subsidiary or affiliated corporation of his or her employer, when the soil classifying performed is in connection with the property, products, or services of his or her employer.

History. Acts 1975, No. 460, § 19;
A.S.A. 1947, § 71-2719.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF REGISTRATION FOR PROFESSIONAL SOIL CLASSIFIERS

SECTION.

17-47-201. Creation and members.

17-47-202. Powers of the board.

SECTION.

17-47-203. Records and reports — Disposition of funds.

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-47-201. Creation and members.

(a) There is created the Arkansas State Board of Registration for Professional Soil Classifiers.

(b)(1) The board shall consist of five (5) members to be appointed by the Governor for terms of five (5) years. The Governor shall consider for appointment a list of nominees submitted to him or her by the Arkansas Association of Professional Soil Classifiers.

(2) Each member of the board shall be a citizen of the United States and a resident of this state.

(3) One (1) member of the board shall be a member of a board of directors of a soil conservation district in this state.

(4) Three (3) members of the board shall be registered professional soil classifiers in this state.

(5) One (1) member of the board shall be from the public at large in this state.

(c) A member may be reappointed to succeed himself or herself.

(d) Each member shall hold office until a successor has been duly appointed.

(e) The Governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(f) Vacancies on the board, however created, shall be filled by the Governor for the unexpired term.

(g) All members shall be subject to confirmation of the Senate.

(h) Each member of the board shall serve without compensation, except that the board member may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1975, No. 460, § 1; A.S.A. 1947, § 71-2701; Acts 1997, No. 250, § 151.

A.C.R.C. Notes. The terms of the mem-

bers of the Arkansas State Board of Registration for Professional Soil Classifiers are arranged so that one term expires every year.

17-47-202. Powers of the board.

The Arkansas State Board of Registration for Professional Soil Classifiers shall have the power to:

(1) Administer this chapter;

(2) Adopt and amend all bylaws, rules of procedure, and regulations to administer and carry out the provisions of this chapter and for the conduct of its affairs and functions, consistent with this chapter and the Constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulation of its proceedings, meetings, records, examinations, and the conduct thereof;

(3) Adopt and promulgate a code of ethics which shall be binding upon all persons registered under or subject to this chapter;

(4) Employ clerks, technical experts, and attorneys as it may deem necessary or desirable to carry out the provisions of this chapter;

(5) Apply in the name of the state for relief by injunction, without bond, enforce the provisions of this chapter, or restrain any violation

thereof. In this proceeding it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board shall not be personally liable under this proceeding; and

(6) Enter into agreements with the Arkansas Soil and Water Conservation Commission to share office, clerical, and secretarial services and to reimburse the commission for the cost of the services.

History. Acts 1975, No. 460, § 3; A.S.A. 1947, § 71-2703.

17-47-203. Records and reports — Disposition of funds.

The Arkansas State Board of Registration for Professional Soil Classifiers shall:

(1) Keep a record of its proceedings and of all applications for registration which shall show the name, age, and last-known address of each applicant, his or her education, experience, and other qualifications, type of examination required, whether or not a certificate of registration was granted, whether or not the applicant was rejected, the date of the action of the board, and other information which may be deemed necessary by the board. The record of the board shall be prima facie evidence of the proceeding of the board. A transcript thereof certified by the secretary under seal shall be admissible as evidence with the same force and effect as if the original were produced;

(2) Annually submit to the Governor a report of its transactions of the preceding year and transmit to him or her a complete statement of the receipts and expenditures of the board attested by affidavits of its chair and its secretary; and

(3) Establish accounts in one (1) or more banks in this state, chosen by the board, into which all funds collected by the board under this chapter shall be deposited and from which all expenditures approved by the board, or by its chair and secretary acting on authority of the board, shall be made.

History. Acts 1975, No. 460, § 4; A.S.A. 1947, § 71-2704.

SUBCHAPTER 3 — REGISTRATION AND CERTIFICATION

SECTION.

- 17-47-301. Registration required.
- 17-47-302. Eligibility — Application.
- 17-47-303. Examinations.
- 17-47-304. Professional soil classifiers —
Qualifications — Registration.
- 17-47-305. Soil classifier-in-training —
Qualifications — Certification.

SECTION.

- 17-47-306. Issuance — Form — Evidence.
- 17-47-307. Registration fees.
- 17-47-308. Expiration and renewal.
- 17-47-309. Reissuance.
- 17-47-310. Code of ethics.
- 17-47-311. Disciplinary actions —
Grounds.
- 17-47-312. Disciplinary actions — Procedure.

17-47-301. Registration required.

No person shall practice or offer to practice professional soil classifying as defined by this chapter unless the person is registered to practice under or exempt from the provisions of this chapter.

History. Acts 1975, No. 460, § 18;
A.S.A. 1947, § 71-2718.

17-47-302. Eligibility — Application.

(a) To be eligible for registration as a professional soil classifier or certification as a soil classifier-in-training, an applicant must:

- (1) Be of good character and reputation; and
- (2) Submit a written application to the Arkansas State Board of Registration for Professional Soil Classifiers containing such information as the board may require, together with five (5) references, three (3) of which shall be professional soil classifiers having personal knowledge of his or her soil classifying experience or, in the case of an application for certification as a soil classifier-in-training, three (3) character references.

(b) Application for registration as a professional soil classifier and for certification as a soil classifier-in-training shall:

- (1) Be on a form prescribed and furnished by the board;
- (2) Contain statements made under oath showing the applicant's education, a detailed summary of his or her experience, and references as required by this chapter; and
- (3) Be accompanied by an application fee established by the board of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00).

History. Acts 1975, No. 460, §§ 5, 9;
A.S.A. 1947, §§ 71-2705, 71-2709; Acts
1993, No. 1219, § 12.

17-47-303. Examinations.

(a) Examinations shall be held at times and places which the Arkansas State Board of Registration for Professional Soil Classifiers shall determine.

(b) Examinations required on fundamental soil subjects may be taken at any time prescribed by the board.

(c) The final examinations may not be taken until the applicant has completed a period of soil classifying experience as provided in this chapter.

(d) A candidate failing one (1) examination may apply for reexamination which may be granted upon payment of a fee established by the board of not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).

History. Acts 1975, No. 460, § 11;
A.S.A. 1947, § 71-2711.

17-47-304. Professional soil classifiers — Qualifications — Registration.

(a) An applicant otherwise eligible shall be admitted to registration as a professional soil classifier if he or she has successfully passed an examination in the principles and practice of soil classifying as prescribed by the Arkansas State Board of Registration for Professional Soil Classifiers and has one of the following additional qualifications:

(1) Is a graduate of a soils curriculum approved by the board as satisfactory and with a specific record of an additional one (1) year or more of experience of a grade and character which indicates to the board that the applicant is competent to practice soil classifying and who holds a valid soil classifier-in-training certificate;

(2) Is a person who has satisfactorily completed a soil curriculum not approved by the board and two (2) years or more of experience in soil classifying work of a character and grade which indicates to the board that the applicant is competent to practice soil classifying; or

(3) Is a person who holds a valid soil classifier-in-training certificate with a specific record of one (1) year or more of experience as a soil classifier-in-training of a grade and character which indicates to the board that the applicant is competent to practice soil classifying.

(b) An application otherwise qualified shall be admitted to registration as a professional soil classifier without examination if he or she is a person who holds a certificate of registration in the practice of soil classifying on the basis of comparable qualifications issued to him or her by a proper authority of another state, possession, or territory of the United States and who, in the opinion of the board, meets the requirements of this chapter.

History. Acts 1975, No. 460, §§ 6, 7;
A.S.A. 1947, §§ 71-2706, 71-2707.

17-47-305. Soil classifier-in-training — Qualifications — Certification.

Unless otherwise qualified, a person shall be admitted to certification as a soil classifier-in-training. The certification shall be valid for four (4) years, if he or she is a person who:

(1) Is a graduate of a soils curriculum approved by the Arkansas State Board of Registration for Professional Soil Classifiers and has passed an examination in the fundamentals of soil classification; or

(2) Is an applicant who has completed a soil curriculum not approved by the board, who has a specific record of one (1) year of soil classification experience of a grade and character satisfactory to the board, and who passes an examination in the fundamentals of soil classification.

History. Acts 1975, No. 460, § 8; A.S.A. 1947, § 71-2708.

17-47-306. Issuance — Form — Evidence.

(a) The Arkansas State Board of Registration for Professional Soil Classifiers shall issue a certificate of registration upon payment of the registration fee as provided for in § 17-47-307 to any applicant who, in the opinion of the board, has met the requirements of this chapter.

(b) Enrollment cards shall be issued to those who qualify as soil classifiers-in-training.

(c) Certificates of registration shall carry the designation “professional soil classifier”, shall show the full name of the registrant without any titles, shall be numbered, and shall be signed by the chair and the secretary under the seal of the board.

(d) The issuance of a certificate of registration by the board shall be prima facie evidence that the person is entitled to all rights and privileges of a professional soil classifier during the term for which the certificate is valid, providing it has not been revoked or suspended.

History. Acts 1975, No. 460, § 12; A.S.A. 1947, § 71-2712.

17-47-307. Registration fees.

Registration fees shall be established by the Arkansas State Board of Registration for Professional Soil Classifiers subject to the following limitations:

(1) The registration fee for professional soil classifiers shall be in an amount of not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100);

(2) The registration fee for soil classifier-in-training certification or enrollment shall be established by the board in an amount not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00); and

(3) Should the board deny the issuance of a certificate to an applicant, the fee paid may be retained as an application fee.

History. Acts 1975, No. 460, § 10; A.S.A. 1947, § 71-2710.

17-47-308. Expiration and renewal.

(a) Certificates of registration shall expire on June 30 following their issuance and shall become invalid after that date unless renewed.

(b)(1) It shall be the duty of the secretary of the Arkansas State Board of Registration for Professional Soil Classifiers to notify every person registered under this chapter of the date of the expiration of the certificate of registration and the amount of the fee required for its renewal.

(2) Notice shall be mailed to the registrant at his or her last known address at least one (1) month in advance of the expiration of the certificate.

(c) Renewal may be effected at any time prior to or during the month of July by the payment of a fee established by the Arkansas State Board of Registration for Professional Soil Classifiers not to exceed the fees established for registration.

(d) Renewal of an expired certificate may be effected under rules promulgated by the board regarding requirements for reexamination and penalty fees.

History. Acts 1975, No. 460, § 13;
A.S.A. 1947, § 71-2713.

17-47-309. Reissuance.

A new certificate of registration to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules of the Arkansas State Board of Registration for Professional Soil Classifiers. A reasonable charge shall be made for reissuance.

History. Acts 1975, No. 460, § 14;
A.S.A. 1947, § 71-2714.

17-47-310. Code of ethics.

(a) The Arkansas State Board of Registration for Professional Soil Classifiers shall cause to have prepared and shall adopt a code of ethics, a copy of which shall be delivered to every registrant and applicant for registration under this chapter.

(b) The delivery shall constitute due notice to all registrants.

(c) The board may revise and amend this code of ethics from time to time and shall forthwith notify each registrant in writing of revisions and amendments.

(d) The code of ethics shall apply to all certificate holders.

History. Acts 1975, No. 460, § 15;
A.S.A. 1947, § 71-2715.

17-47-311. Disciplinary actions — Grounds.

The Arkansas State Board of Registration for Professional Soil Classifiers shall have the power to suspend, refuse to renew, or revoke the certificate of registration of, or reprimand, any registrant who is guilty of:

(1) Fraud or deceit in obtaining a certificate of registration;

(2) Gross negligence, incompetence, or misconduct in the practice of soil classifying;

(3) A felony or crime involving moral turpitude; or

(4) A violation of the code of ethics adopted and promulgated by the board.

History. Acts 1975, No. 460, § 16;
A.S.A. 1947, § 71-2716.

17-47-312. Disciplinary actions — Procedure.

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the code of ethics against any individual registrant.

(b) Charges shall be in writing, shall be sworn to by the person or persons making them, and shall be filed with the secretary of the Arkansas State Board of Registration for Professional Soil Classifiers.

(c) All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three (3) months after the date on which they shall have been preferred.

(d) The time and place for the hearing shall be fixed by the board.

(e) A copy of the charges together with a notice of the time and place of hearing shall be served upon the accused either personally or sent by registered or certified mail to the last known address of the individual registrant at least thirty (30) days before the date fixed for hearing.

(f) At any hearing, the accused registrant shall have the right to appear in person or by counsel, or both, to cross-examine witnesses appearing against the accused, and to produce evidence and witnesses in defense of the accused.

(g) If the accused person fails or refuses to appear, the board may proceed to hear and determine the validity of the charges.

(h) If after the hearing a majority of the board votes in favor of sustaining the charges, the board shall make findings of fact, draw its conclusions, and issue its order therein and serve it upon the accused.

(i) In the order the board may reprimand, suspend, refuse to renew, or revoke the accused individual's certificate of registration.

(j) Any person who feels aggrieved by any action of the board in denying, suspending, refusing to renew, or revoking his or her certificate of registration may appeal therefrom to the circuit court of the county in which he or she resides or in Pulaski County as the aggrieved party may elect.

History. Acts 1975, No. 460, § 17;
A.S.A. 1947, § 71-2717.

CHAPTER 48
SURVEYORS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REGISTRATION.
3. PRIVILEGES AND RESPONSIBILITIES UPON ENTERING PRIVATE LAND OR WATER.

A.C.R.C. Notes. References to "this chapter" in subchapters 1 and 2 may not apply to subchapter 3 which was enacted subsequently.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-41-101 et seq.

RESEARCH REFERENCES

Am. Jur. 58 Am. Jur. 2d, Occup., §§ 69-75.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-48-101. Definitions.
17-48-102. Penalties — Enforcement.
17-48-103. Regulation.
17-48-104. Powers of the board.

SECTION.

17-48-105. Seal and signature required.
17-48-106. Failure to file boundary survey.
17-48-107. Contents of survey.

Cross References. Engineers, § 17-30-101 et seq.

Surveys, § 15-21-201 et seq.

Effective Dates. Acts 1967, No. 101, § 15: Feb. 16, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that many persons are engaging in the practice of land surveying in this state without possessing necessary qualifications therefor and that the immediate passage of this act is necessary to provide for the protection of the public in obtaining the services of qualified and regulated land surveyors. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval."

Acts 1981, No. 919, § 5: Mar. 30, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that lawful performance of the duties assigned to the several county assessors of the state requires that acreage accountability be improved upon, and, to that end, this act will require surveyors and recorders to make a part of any document recorded the acreage involved in the transaction. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-48-101. Definitions.

As used in this chapter:

(1)(A) "Firm" means any form of business entity that offers professional surveying services of its licensed personnel to the public.

(B) "Firm" does not include an individual licensee operating under his or her name.

(2)(A) "Land surveying" means any service comprising the:

(i) Determination of the location of land boundaries and land boundary corners; and

(ii) Preparation of:

(a) Plats showing the shape and areas of tracts of land and their subdivision into smaller tracts;

(b) Plats showing the location of streets, roads, and rights-of-way of tracts to give access to smaller tracts; and

(c) Official plats, or maps, of land thereof in this state.

(B) “Land surveying” does not include the measure of acreage of timber, cotton, rice, or other agricultural crops.

(C) A person practices or offers to practice land surveying who:

(i) Engages in land surveying for others; or

(ii) By verbal claim, sign, letterhead, card, telephone listing, or in any other way represents himself or herself:

(a) To be a professional surveyor; or

(b) As able to perform land surveying in this state;

(3) “Metadata” means a description of the content, ancestry and source, quantity, database schema, and accuracy of digital map data;

(4) “Professional surveyor” means a person who by reason of special knowledge of mathematics, surveying principles and methods, and legal requirements that are acquired by education or practical experience is qualified to engage in the practice of land surveying and surveying measurement certification; and

(5) “Surveying measurement certification” means providing the professional service of certification or sealing of maps, documents, digital files, or other data to verify that the maps, documents, digital files, or other data are authoritative professional determinations based on accepted methods and principles of surveying measurement or analysis representing or listing the following types of surveying measurements:

(A) The configuration or contour of the earth’s surface or the position of fixed objects on the earth’s surface;

(B) The position or elevation of any survey boundary or control monument or reference point; and

(C) The alignment or elevation of any fixed works embraced within the practice of professional engineering.

History. Acts 1967, No. 101, § 2; A.S.A. 1947, § 71-2302; Acts 2005, No. 1178, § 7; 2005, No. 1962, § 74; 2009, No. 444, § 5. rewrote (1); and made minor stylistic changes.

Amendments. The 2009 amendment § 14-15-701 et seq. **Cross References.** County surveyors,

CASE NOTES

Cited: Killian v. Hill, 32 Ark. App. 25, 795 S.W.2d 369 (1990).

17-48-102. Penalties — Enforcement.

(a)(1) Unless a different penalty is specifically provided, a person who violates this chapter shall be guilty of a Class B misdemeanor.

(2) It is the duty of all duly constituted officers of the state and all of its political subdivisions to enforce this chapter and prosecute any persons violating it.

(b)(1) The State Board of Licensure for Professional Engineers and Professional Surveyors may levy a civil penalty against any licensed engineer, professional surveyor, or surveyor intern who:

(A) Is found guilty of:

(i) Fraud or deceit in his or her practice or in securing a certificate of licensure; or

(ii) Gross negligence, incompetence, or misconduct; or

(B) Fails or refuses to comply with any laws relating to the licensure and practice of engineers, professional surveyors, or surveyor interns or any rules or regulations adopted by the board under the authority granted in such laws.

(2) Any civil penalty levied by the board may be in lieu of or in addition to any other sanction imposed by the board.

(3) A civil penalty assessed by the board shall not be more than five thousand dollars (\$5,000).

(c) The Attorney General or his or her assistants shall act as legal advisors to the board and render such legal assistance as may be necessary.

(d) The board may employ counsel to enforce this chapter, the costs to be paid from the funds of the board.

History. Acts 1967, No. 101, § 12; A.S.A. 1947, § 71-2311; Acts 1987, No. 1070, § 2; 2005, No. 1178, § 8; 2005, No. 1994, § 401; 2009, No. 444, § 5.

Amendments. The 2009 amendment, in (b), substituted “licensure” for “regis-

tration” in two places, substituted “Professional” for “Land” and “licensed” for “registered” in (b)(1), and rewrote (b)(3); and made minor stylistic changes throughout the section.

17-48-103. Regulation.

In order to safeguard the life, health, or property of the public, the practice of land surveying in this state is declared to be subject to regulation in the public interest.

History. Acts 1967, No. 101, § 1; A.S.A. 1947, § 71-2301.

17-48-104. Powers of the board.

(a) The State Board of Licensure for Professional Engineers and Professional Surveyors may adopt and amend all bylaws and rules of procedure not inconsistent with the Arkansas Constitution and laws of this state or this chapter that may be reasonably necessary for the proper performance of its duties and the regulations of its proceedings, meetings, records, examinations, and the conduct thereof.

(b) The board may engage such technical advice and counsel as necessary to review applications, conduct interviews, prepare and give examinations, grade examinations, as required by this chapter, and to pay for such services.

(c)(1) In carrying into effect this chapter, the board, under the hand of its president and the seal of the board, may subpoena witnesses and

compel their attendance and also may require the submission of books, papers, documents, or other pertinent data in any disciplinary matter or in any case in which a violation of this chapter is alleged.

(2) Upon failure or refusal to comply with any such order of the board or upon failure to honor its subpoena, as provided in this section, the board may apply to a court of any jurisdiction to enforce compliance with them.

(d)(1) In the name of the state, the board may apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce this chapter or to restrain any violation thereof.

(2) In such proceedings, it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof.

(3) The members of the board shall not be personally liable under this procedure.

(e) The board may establish application fees, certificate fees, renewal fees, and any other fees as it deems necessary within the guidelines of the State of Arkansas.

History. Acts 1967, No. 101, § 8; A.S.A. 1947, § 71-2307; Acts 2009, No. 444, § 6.

Amendments. The 2009 amendment substituted “Licensure” for “Registration”

and “Professional” for “Land” in (a); subdivided (d); added (e); and made minor stylistic changes.

17-48-105. Seal and signature required.

(a) Each licensed professional surveyor shall:

(1) Procure a personal seal, in form approved by the State Board of Licensure for Professional Engineers and Professional Surveyors; and

(2) Affix his or her signature and the seal upon all maps, plats, surveys, or other documents before the delivery thereof to any client or before offering to file a record of any such map, plat, survey, or other document in the office of the recorder of deeds of any county or with any proper public authority.

(b) It is unlawful for the recorder of deeds of any county or any proper public authority to file or record any map, plat, survey, or other document within the definition of land surveying that does not have impressed thereon and affixed thereto the personal signature and seal of a licensed professional surveyor by whom the map, plat, survey, or other document was prepared.

History. Acts 1967, No. 101, §§ 10, 11; A.S.A. 1947, §§ 71-2309, 71-2310; Acts 2005, No. 1178, § 9; 2009, No. 444, § 6.

Amendments. The 2009 amendment substituted “licensed” for “registered” in

the introductory language of (a) and in (b); substituted “Licensure” for “Registration” and “Professional” for “Land” in (a)(1); and made minor stylistic changes.

17-48-106. Failure to file boundary survey.

(a)(1) A licensed surveyor is not required to file a plat until he or she has been paid for performing the survey.

(2) A licensed surveyor shall file the plat with the State Surveyor within thirty (30) days after payment for performing the survey or the plat is completed, whichever event occurs last.

(b) The sole purpose of filing the plat shall be to identify the person or persons who made the plat and survey and placed the survey markers and shall not be used to evidence adverse possession or as evidence in boundary disputes.

(c) The provisions of this chapter shall not apply to surveys hereafter made of subdivided property located in a municipality where property has previously been surveyed and a plat filed.

(d) Any licensed surveyor who shall fail or refuse to file the survey as provided by this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) or imprisonment for not less than thirty (30) days nor more than six (6) months, or subject to both fine and imprisonment.

History. Acts 1969, No. 645, §§ 1, 2; A.S.A. 1947, §§ 71-2312, 71-2313; Acts 2001, No. 591, § 3; 2007, No. 1040, § 1. **Amendments.** The 2007 amendment rewrote (a).

17-48-107. Contents of survey.

(a) Every survey of a parcel of real property made after March 30, 1981, shall include a statement of the number of acres or parts of acres included in the parcel surveyed. If the parcel surveyed includes lands situated in more than one quarter-quarter, the approximate number of acres of the parcel lying in each quarter-quarter shall be shown separately.

(b) The General Assembly recognizes that every county assessor in the state is required by law to account for and list each parcel of real property and every acre within his or her jurisdiction. It is the intent and purpose of this section to assist the various assessors to carry out this responsibility by requiring that every survey of real estate made after March 30, 1981, specify therein the number of acres or parts of acres included in the survey.

History. Acts 1981, No. 919, §§ 1, 2; A.S.A. 1947, §§ 84-450.1, 84-450.2.

SUBCHAPTER 2 — REGISTRATION

SECTION.	SECTION.
17-48-201. Registration required — Sole or group practice — Trainees.	17-48-202. Application.
	17-48-203. Qualifications — Certification.

SECTION.

17-48-204. Expiration and renewal — Inactive status — Reinstatement.

17-48-205. Revocation.

SECTION.

17-48-206. Continuing education requirements.

17-48-207. Certificates of authorization.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1967, No. 101, § 15: Feb. 16, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that many persons are engaging in the practice of land surveying in this state without possessing necessary qualifications there-

for and that the immediate passage of this act is necessary to provide for the protection of the public in obtaining the services of qualified and regulated land surveyors. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-48-201. Registration required — Sole or group practice — Trainees.

(a)(1) It is unlawful for a person who is not a professional surveyor licensed by the State Board of Licensure for Professional Engineers and Professional Surveyors to hold himself or herself out as a professional surveyor to practice or offer to practice land surveying in the state, as defined in this chapter, or to use in connection with his or her name or otherwise assume or advertise any title or description tending to convey the impression that he or she is a professional surveyor unless the person has been licensed under this chapter.

(2) The board may discipline nonlicensees that violate this chapter by the levy of a fine in an amount not to exceed five thousand dollars (\$5,000) for each offense.

(b)(1)(A) Admission to practice land surveying and surveying measurement certification shall be determined upon the basis of individual personal qualifications.

(B) The right to engage in the practice of land surveying and surveying measurement certification is a personal right, based upon the qualifications of the individual, evidenced by his or her license certificate, and is not transferable.

(2) "Surveying measurement certification" does not permit the preparation of engineering or architectural design documents or quantity estimate payment documents.

(c)(1) A professional surveyor may practice his or her profession through the medium of or as a member or employee of a firm if:

(A) All surveys are signed and stamped with the signature and seal of the professional surveyor in responsible charge; and

(B) The firm has complied with § 17-48-207.

(2) The professional surveyor signing and sealing the surveys shall be personally and professionally responsible therefor, and his or her

participation in any firm either as a partner, principal, or employee does not limit his or her individual liability.

(d) A surveyor intern may engage in the practice of land surveying only as an employee of or under the supervision of a professional surveyor.

(e) It is unlawful for a person to prepare, distribute, or place the public records, maps, documents, digital files, or other data that bear or contain a seal or any certification consisting of a verbal, numerical, or symbolic representation of the accuracy or precision of surveying measurements as defined in § 17-48-101(4) or that bear or contain a statement of determination by an authoritative professional source unless the maps, documents, digital files, or other data bear or contain the seal of a professional surveyor or professional engineer practicing within his or her respective discipline.

(f) This chapter does not apply to:

(1) The usual symbols and statements of the cartographic representation of scale and direction, including without limitation scale ratios, scale bars, and north arrows;

(2) The preparation and attachment of metadata or to the scientific analysis of measurement data for research by a person who is not a professional surveyor or professional engineer; and

(3) A government agency or office in conducting its statutory or constitutional duties to certify representations of spatial data.

(g) This chapter does not impair or reduce the scope of:

(1) The professional practice of engineers as defined by statute and rules of the board; and

(2) The professional practice of professional architects as defined by statute and rules of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

History. Acts 1967, No. 101, §§ 1, 3; 1977, No. 807, § 1; A.S.A. 1947, §§ 71-2301, 71-2303; Acts 1997, No. 1297, § 1; 2005, No. 1178, § 10; 2009, No. 444, § 7.

A.C.R.C. Notes. The amendment of § 14-28-201(g) by Acts 2009, No. 444, § 7 omitted the language “shall impair or reduce” which should have also been stricken through.

Publisher's Notes. Acts 1985, No. 549, § 2, provided that any person having held the office of county surveyor since January 1, 1983, or presently holding the office of county surveyor in any county in this state on June 28, 1985, shall be registered as a land surveyor by the State Board of Registration for Professional Engineers and Land Surveyors if such person files an

application with the board for registration, furnishes satisfactory proof that the applicant is either registered as a professional engineer or has had at least two years of experience as a practical surveyor and pays an application fee of \$35.00.

Amendments. The 2009 amendment, in (a), substituted “licensed” for “registered,” “Licensure” for “Registration,” and “Professional” for “Land” in (a)(1), and substituted “nonlicensees” for “nonregistrants” and “five thousand dollars (\$5,000)” for “two thousand dollars (\$2,000)” in (a)(2); substituted “license” for “registration” in (b)(1)(B); subdivided and rewrote (c); and made minor stylistic changes.

17-48-202. Application.

(a) Application for licensure as a professional surveyor or surveyor intern shall be made on forms provided by the State Board of Licensure for Professional Engineers and Professional Surveyors to be signed and sworn to by the applicant.

(b) The forms shall contain statements made under oath, showing the applicant's education, experience record, references, and any other pertinent information as determined by the board.

History. Acts 1967, No. 101, § 6; 1977, No. 807, § 3; A.S.A. 1947, § 71-2305; Acts 2005, No. 1178, § 11; 2009, No. 444, § 7.

Amendments. The 2009 amendment, in (a), substituted "licensure" for "regis-

tration" twice and substituted "Professional" for "Land"; inserted "references" and "as determined by the board" in (b); deleted (c) through (e); and made related changes.

17-48-203. Qualifications — Certification.

(a) A person who shows to the satisfaction of the State Board of Licensure for Professional Engineers and Professional Surveyors that he or she is a person of good character and reputation and over twenty-one (21) years of age shall be eligible for licensure as a professional surveyor if he or she qualifies under one (1) of the following provisions:

(1) A person holding a certificate of licensure to engage in the practice of land surveying issued to him or her on the basis of a written examination by proper authority of a state, territory, possession of the United States, the District of Columbia, or any foreign country, based on requirements and qualifications as shown on his or her application that in the opinion of the board are equal to or higher than the requirements of this chapter may be licensed at the discretion of the board;

(2)(A) A graduate from an approved engineering curriculum with sufficient surveying courses or a surveying technology curriculum of two (2) years or more approved by the board, followed by at least two (2) years of land surveying that must be surveying experience of a character satisfactory to the board, who has passed a written examination designed to show that he or she is qualified to practice land surveying in this state, may be licensed if he or she is otherwise qualified.

(B) Each year of teaching land surveying in an approved engineering or surveying curriculum may be considered as equivalent to one (1) year of land surveying experience; or

(3)(A) An applicant who cannot qualify under subdivision (a)(2) of this section and who has six (6) years or more of active experience in land surveying of a character satisfactory to the board and who has passed a written examination designed to show that he or she is qualified to practice land surveying may be granted a certificate of licensure to practice land surveying in this state if he or she is otherwise qualified.

(B) Each year of satisfactory work in an approved engineering or engineering technology curriculum majoring in surveying may be considered as one (1) year of experience in land surveying, but not exceeding two (2) years.

(b) Effective January 1, 2017, an applicant for licensure as a professional surveyor shall qualify under one (1) of the following provisions:

(1)(A) A graduate holding a baccalaureate degree from a curriculum of four (4) years or more who has completed at least thirty (30) semester credit hours or the equivalent, as approved by the board, in courses involving land surveying, mapping, and real property, as approved by the board, followed by three (3) years or more of experience in responsible charge of land surveying under the supervision of a professional surveyor and who has passed an examination for certification as a surveyor intern shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is otherwise qualified shall be granted licensure as a professional surveyor upon passing the written examination; or

(2)(A) A graduate holding an associate of science degree in surveying or an associate of applied science in surveying degree from a program approved by the board or its equivalent, as approved by the board, followed by six (6) years or more of experience in responsible charge of land surveying under the supervision of a professional surveyor, and who has passed an examination for certification as a surveyor intern shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is otherwise qualified shall be granted licensure as a professional surveyor upon passing the written examination.

(c) A person who shows to the satisfaction of the board that he or she is a person of good character shall be eligible for licensure as a surveyor intern if he or she qualifies under one (1) of the following provisions:

(1) A person holding a certificate of licensure as a surveyor intern issued to him or her on the basis of a written examination by proper authority of a state, territory, possession of the United States, the District of Columbia, or any foreign country, based on requirements and qualifications as shown on his or her application, which requirements and qualifications, in the opinion of the board, are equal to or higher than the requirements of this chapter, may be licensed as a surveyor intern at the discretion of the board;

(2) A graduate from an approved engineering curriculum with sufficient surveying courses, or a surveying technology curriculum of two (2) years or more, approved by the board, who has passed a written examination designed to show that he or she is proficient in surveying fundamentals, may be licensed if he or she is otherwise qualified; or

(3)(A) An applicant who cannot qualify under subdivision (c)(2) of this section and who has four (4) years or more of active experience in land surveying of a character satisfactory to the board and who has

passed a written examination designed to show that he or she is proficient in surveying fundamentals may be licensed if he or she is otherwise qualified.

(B) Each year of satisfactory work in an approved engineering or engineering technology curriculum majoring in surveying may be considered as one (1) year of experience in land surveying, but not exceeding two (2) years.

(d) Effective January 1, 2017, an applicant for licensure as a surveyor intern shall qualify under one (1) of the following provisions:

(1)(A) A graduate holding a baccalaureate degree from a curriculum of four (4) years or more who has completed at least thirty (30) semester credit hours, or the equivalent approved by the board, in courses involving land surveying, mapping, and real property as approved by the board shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is otherwise qualified shall be granted licensure as a surveyor intern upon passing the written examination;
or

(2)(A) A graduate holding an associate of science degree in surveying or an associate of applied science in surveying degree from a program approved by the board or its equivalent shall be admitted to sit for a written examination in a form approved by the board.

(B) An applicant who is otherwise qualified shall be granted licensure as a surveyor intern upon passing the written examination.

History. Acts 1967, No. 101, § 4; 1977, No. 807, § 2; A.S.A. 1947, § 71-2304; Acts 2005, No. 1178, § 12; 2009, No. 392, § 1; 2009, No. 444, § 7.

Publisher's Notes. As to registration of persons actively engaged in land surveying prior to February 16, 1967, see Acts 1967, No. 101, § 5 and 1969, No. 55, § 1.

As to registration of persons holding office of county surveyor on June 28, 1985, see Acts 1985, No. 549, § 2.

Amendments. The 2009 amendment by No. 392 inserted (b), redesignated the subsequent subsection accordingly, added (d), and made a minor stylistic change.

The 2009 amendment by No. 444 substituted "licensure" for "registration" and "licensed" for "registered" throughout the section; substituted "Professional Surveyors" for "Land Surveyors" in (a); and made minor stylistic changes.

17-48-204. Expiration and renewal — Inactive status — Reinstatement.

(a) All certificates shall be renewed annually or biennially at the discretion of the State Board of Licensure for Professional Engineers and Professional Surveyors.

(b) Certificates of licensure for professional surveyors and professional surveyor interns shall be renewed by the board to persons who are holders of certificates issued under this chapter who have furnished evidence satisfactory to the board of compliance with the requirements of § 17-48-206(a).

(c)(1)(A) Notwithstanding subsection (b) of this section, a professional surveyor or surveyor intern licensed under this chapter who is

not engaged in the practice of land surveying may request in writing that the board place his or her name on the board's inactive roll, thereby granting him or her inactive status and protecting his or her right to obtain a certificate of licensure under subsection (b) of this section at such later time as he or she may wish to become engaged in the practice of land surveying.

(B) Inactive status shall continue as long as the licensee pays the annual fee under the board's rules.

(2) A professional surveyor whose license is inactive may return to active status by:

(A) Notifying the board in advance of his or her intention to return to active status;

(B) Paying the appropriate fees; and

(C) Meeting all requirements of the board, including demonstration of continuing professional competency.

(d) A professional surveyor or surveyor intern whose certificate of licensure has not been renewed may have it reinstated by meeting all requirements of the board, including:

(1) Payment of fees;

(2) Payment of applicable penalties;

(3) Demonstration of continuing professional competency; and

(4) Reexamination.

History. Acts 1967, No. 101, § 7; 1977, No. 807, § 4; A.S.A. 1947, § 71-2306; Acts 1987, No. 1070, § 1; 1997, No. 1297, § 2; 2001, No. 591, § 4; 2005, No. 1178, § 13; 2009, No. 444, § 7.

Amendments. The 2009 amendment

substituted "licensure" for "registration" and "licensed" for "registered" throughout the section; substituted "Professional Surveyors" for "Land Surveyors" in (a); rewrote (c) and (d); and made minor stylistic changes.

17-48-205. Revocation.

The State Board of Licensure for Professional Engineers and Professional Surveyors shall revoke the license of a professional surveyor or surveyor intern if after a hearing the board finds that the professional surveyor or surveyor intern:

(1) Secured his or her license through the practice of fraud or deceit or through false statements made in his or her application for his or her license in any document subsequently filed or in any oral testimony subsequently given in support of the applications;

(2) Has been guilty of any gross negligence, incompetence, or misconduct in the practice of land surveying; or

(3) Has been convicted of any felony or crime involving moral turpitude.

History. Acts 1967, No. 101, § 9; 1977, No. 807, § 5; A.S.A. 1947, § 71-2308; Acts 2005, No. 1178, § 14; 2009, No. 444, § 7.

Amendments. The 2009 amendment subdivided the section; in the introductory

language, substituted "Licensure" for "Registration" and "Professional Surveyors" for "Land Surveyors"; substituted "license" for "registration" twice in (1); and made related and minor stylistic changes.

17-48-206. Continuing education requirements.

(a)(1)(A) After the expiration of the two-year period immediately following the effective date of the adoption of regulations by the State Board of Licensure for Professional Engineers and Professional Surveyors establishing requirements of continuing education, every application for renewal of a certificate of licensure under this section shall be accompanied or supported by such evidence as the board prescribes documenting the completion of fifteen (15) hours of acceptable continuing education, approved by the board, during the twelve-month period immediately preceding the date of application.

(B) Failure by an applicant to provide this evidence constitutes grounds for revocation, suspension, or refusal to renew the permit unless the board, in its discretion, determines the failure is due to reasonable cause or the applicant was not engaged in the practice of land surveying and maintained his or her initial certificate of licensure under § 17-48-204(c).

(2)(A) In its discretion, the board may renew a certificate of licensure despite the failure to furnish evidence of satisfaction of requirements of continuing education and may issue a certificate of licensure to an applicant who has previously maintained inactive status under § 17-48-204(c) upon the condition that the applicant follow a particular program or schedule of continuing education.

(B) In issuing rules, regulations, and individual orders in respect to requirements of continuing education, in its discretion the board:

(i) May, among other things, use and rely upon guidelines and pronouncements of recognized educational and professional associations;

(ii) May prescribe content, duration, and organization of courses;

(iii) Shall take into account the accessibility to applicants of such continuing education as it may require; and

(iv) May provide for relaxation or suspension of requirements in regard to applicants who certify that they do not intend to engage in the practice of land surveyors and for instances of individual hardship.

(3) In its discretion, the board may exempt licensed professional surveyors sixty (60) years of age or with twenty (20) or more years' experience as practicing professional surveyors within this state from the provisions of this subsection.

(b)(1) The board may prescribe regulations, procedures, and policies in the manner and condition under which credit shall be given for participation in a program of continuing education that the board may deem necessary and appropriate to maintain the highest standard of proficiency in the profession of land surveying.

(2) Examples of programs of continuing education that are acceptable include, without limitation programs or seminars sponsored by higher educational institutions, government agencies, professional organizations of registered land surveyors, and related professions.

History. Acts 1987, No. 1070, § 1; 2005, No. 1178, § 15; 2009, No. 444, § 7.

A.C.R.C. Notes. Former § 17-41-206, which concerned disposition of fees, is deemed to be superseded by this section. The former section was derived from Acts 1967, No. 101, § 7; 1977, No. 807, § 4; A.S.A. 1947, § 71-2306.

Amendments. The 2009 amendment substituted “licensure” for “registration” throughout the section; in (a), subdivided (a)(1), substituted “Professional Surveyors” for “Land Surveyors” in (a)(1)(A), and substituted “licensed” for “registered” in (a)(3); subdivided (b); and made minor stylistic changes.

17-48-207. Certificates of authorization.

(a) A firm that practices or offers to practice surveying is required to obtain a certificate of authorization from the State Board of Licensure for Professional Engineers and Professional Surveyors under the board’s rules.

(b)(1) In order to obtain a certificate of authorization, a surveying firm shall file an application with the board on a form provided by the board and shall provide all information required by the board’s rules.

(2) A firm shall file a new application with the board on a form provided by the board:

(A) Upon renewal of the certificate of authorization; and

(B) Within thirty (30) days of the time that any of the information contained in the application form changes or differs for any reason from the information contained in the original application form.

(3) If in the judgment of the board the application meets the requirements of this chapter, the board shall issue a certificate of authorization for the surveying firm.

(c) A certificate of authorization is not required for a firm performing surveying for:

(1) Itself;

(2) The firm’s parent organization; or

(3) A subsidiary of the firm.

(d)(1) A firm shall not be relieved of responsibility for the conduct or acts of its agents, employees, officers, partners, members, or managers by reason of its compliance with this section.

(2) An individual practicing surveying under this chapter shall not be relieved of his or her responsibility for surveying services performed by reason of employment or other relationship with a firm holding a certificate of authorization.

(e)(1) Unless the board has first issued a certification of authorization or a letter stating the eligibility of an applicant to receive a certificate of authorization, the Secretary of State shall not accept organization papers or issue a certificate of incorporation, licensure, or authorization to a firm that includes among the objectives for which it is established or within its name, the words:

(A) Surveyor;

(B) Surveying; or

(C) Any modification or derivation of surveyor or surveying.

(2) The firm applying to the Secretary of State shall supply the certificate of authorization or letter from the board indicating eligibility

for a certificate of authorization with its application for incorporation, licensure, or authorization.

(f) The Secretary of State shall decline to license a trade name or service mark that includes the words surveyor, surveying, or any modification or derivation of surveyor or surveying in its firm name or logotype except in the case of a firm that has a certificate of authorization under this section.

(g) The certificate of authorization may be renewed under § 17-48-204.

(h) A surveyor who renders occasional, part-time, or consulting surveying services to or for a firm may not, for the purposes of this section, be designated as being in responsible charge of the professional activities of the firm unless the surveyor is an officer or owner of the firm.

History. Acts 2009, No. 444, § 8.

**SUBCHAPTER 3 — PRIVILEGES AND RESPONSIBILITIES UPON ENTERING
PRIVATE LAND OR WATER**

SECTION.

17-48-301. Purpose.

17-48-302. Definition.

17-48-303. Right to enter — Immunity
from arrest — Identification.

SECTION.

17-48-304. Liability.

A.C.R.C. Notes. References to “this chapter” in subchapters 1 and 2 may not apply to this subchapter which was enacted subsequently.

17-48-301. Purpose.

The purpose of this subchapter is to enable surveyors to have access to survey monuments, triangulation stations, traverse stations, leveling stations, section corners, quarter-section corners and sixteenth-section corners, locations, and other evidence needed in conducting or preparing for surveys or in preserving such monuments, triangulation stations, traverse stations, leveling stations, section corners, quarter-section corners and sixteenth-section corners, locations, or other evidence. It is particularly recognized that at times it is necessary for a surveyor to tread on property not in his or her survey contract because the boundaries and corners of any parcel of land are necessarily also those of adjoining parcels and because the location of boundaries and corners often are affected by the location of some that are remote and not adjoining.

History. Acts 1991, No. 862, § 1.

17-48-302. Definition.

As used in this subchapter, "surveyor" means a person:

- (1) Who is a registered surveyor licensed to practice in the State of Arkansas by permanent registration number or by special permit;
- (2) Employed in surveying by the United States Government, by the State of Arkansas, or by a local government agency; and
- (3) Who is under the direct supervision of or is employed by a person who is a surveyor under subdivision (1) or (2) of this section.

History. Acts 1991, No. 862, § 2.

17-48-303. Right to enter — Immunity from arrest — Identification.

(a) Surveyors shall have the right to enter on public or private land or waters, except buildings, in the lawful pursuit of their occupations and shall be immune from arrest for trespass when performing their duties as prescribed in this subchapter.

(b)(1) Where practical, surveyors shall announce and identify themselves and their intentions before entering upon private property.

(2) Surveyors will carry means of proper identification as to their registration or employment and will display the identification to anyone requesting it.

(3) Surveyors shall not use the privilege granted herein to extend that point of entry as determined by actual survey requirements.

History. Acts 1991, No. 862, §§ 3, 4.

17-48-304. Liability.

(a) Surveyors shall be personally liable for any damage caused to private property when exercising entry under this subchapter.

(b) Surveyors shall forfeit any and all claim for damage or personal injury against the landowner while on such lands or waters unless the damage or injury is caused by the intentional tortious conduct of the landowner or his or her agent.

History. Acts 1991, No. 862, § 5.

CHAPTER 49

TRANSIENT MERCHANTS

SUBCHAPTER.

1. TRANSIENT MERCHANT LICENSING ACT OF 1983.
 2. ITINERANT MERCHANTS.
 3. ITINERANT ENTREPRENEURS.
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Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-42-101 et seq.

RESEARCH REFERENCES

Am. Jur. 60 Am. Jur. 2d, Peddlers, § 1 et seq.

SUBCHAPTER 1 — TRANSIENT MERCHANT LICENSING ACT OF 1983

- SECTION.
- 17-49-101. Title.
 - 17-49-102. Purpose.
 - 17-49-103. Definitions.
 - 17-49-104. Exemptions.
 - 17-49-105. Enforcement.
 - 17-49-106. Registration required — Penalty for violation.

- SECTION.
- 17-49-107. Registration for business.
 - 17-49-108. Service of process, notice, or demand.
 - 17-49-109. Registration fee and bond.
 - 17-49-110. Issuance and terms of registration certificate.

Effective Dates. Acts 1983, No. 587, § 14: Mar. 21, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that citizens of this state are often subjected to improper sales techniques by transient merchants who leave the area or the state before such purchasers can take appropriate action to correct the damages resulting from such improper sales techniques; that it is desirable that the state take all reasonable steps to protect residents from misleading sales techniques and the monetary losses that may result therefrom; and that this act is designed to provide for the licensure and regulation of transient merchants and to thereby protect citizens of the state and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983 (1st Ex. Sess.), No. 113, § 3: Nov. 10, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that the provisions of Acts 1983, No. 587 are unreasonably broad and cover business enterprises never contemplated or intended; that if strictly interpreted and enforced, the act as passed would severely restrict the opportunity for schools and school organizations to raise funds through bazaars and sales; that it is impractical to apply such act to sales conducted by charitable organizations; that this act is designed to clarify such law and to exempt certain types of sales from the application of the act and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

17-49-101. Title.

This subchapter shall be known and may be cited as the “Transient Merchant Licensing Act of 1983”.

History. Acts 1983, No. 587, § 1; A.S.A. 1947, § 71-5601.

17-49-102. Purpose.

(a) The General Assembly finds that because of the temporary nature of the business conducted by transient merchants, consumers in the State of Arkansas are not likely to be able to obtain proper contact information to resolve disputes with, serve legal process upon, or satisfy monetary judgments against transient merchants doing business in the State of Arkansas.

(b) It is the purpose and intent of this subchapter to:

(1) Provide the consumers of the State of Arkansas with contact information regarding potential monetary recourse against transient merchants; and

(2) Provide that the registration fees and bonding requirements in this subchapter for transient merchants shall be minimum registration fees and bonding requirements and shall not be construed to limit or restrict the authority of counties, cities, and towns in the state to levy additional license fees and to require additional bonding for transient merchants engaged in business in counties, cities, and towns.

History. Acts 1983, No. 587, § 2; A.S.A. 1947, § 71-5602; Acts 2007, No. 1603, § 1.

Amendments. The 2007 amendment rewrote the section.

17-49-103. Definitions.

As used in this subchapter:

(1) “Person” means any individual, corporation, partnership, association, or other entity;

(2) “Temporary or transient business” means any business conducted for the sale or offer for sale of goods, wares, or merchandise that is carried on in any building, structure, motor vehicle, railroad car, or real estate for a period of less than six (6) months in each year without written evidence of a right to occupy the premises on which a person is conducting business; and

(3) “Transient merchant” means any person, firm, corporation, partnership, or other entity that engages in, does, or transacts any temporary or transient business in the state, either in one (1) locality or in traveling from place to place in the state, offering for sale or selling goods, wares, merchandise, or services.

History. Acts 1983, No. 587, § 3; A.S.A. 1947, § 71-5603; Acts 2007, No. 1603, § 2.

Amendments. The 2007 amendment deleted “unless the context otherwise requires” at the end of the introductory language; added “without written evidence of a right to occupy the premises on

which a person is conducting business” in (2); deleted “and includes those merchants who hire, lease, use, or occupy any building, structure, motor vehicle, railroad car, or real estate for the purpose of carrying on a business” at the end of (3); and made related changes.

17-49-104. Exemptions.

- (a) The provisions of this subchapter shall not apply to:
- (1) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;
 - (2) Wholesale trade shows or conventions;
 - (3) Sales of goods, wares, or merchandise by sample catalogue or brochure for future delivery;
 - (4) Fairs and convention center activities conducted primarily for amusement or entertainment;
 - (5) Any general sale, fair, auction, or bazaar sponsored by any church or religious organization;
 - (6) Garage sales held on the premises devoted to residential use;
 - (7) Sales of crafts or items made by hand and sold or offered for sale by the person making the crafts or handmade items;
 - (8) Sales of agricultural products, except nursery products and foliage plants;
 - (9) Sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of the premises; or
 - (10) School-sponsored bazaars and sales, concessions at school athletic and other events, and sales of paraphernalia used in the celebration of any nationally recognized holiday or used in connection with any public school, university, or college-related activities, flea markets, retail fireworks establishments, gun shows, sales by charitable organizations, sales of coins, and expositions sponsored by government entities or by nonprofit trade associations.
- (b) A transient merchant not otherwise exempted from the provisions of this subchapter shall not be relieved or exempted from the provisions of this subchapter by reason of associating himself or herself temporarily with any local dealer, auctioneer, trader, contractor, or merchant or by conducting such temporary or transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor, or merchant.

History. Acts 1983, No. 587, § 4; 1983 (1st Ex. Sess.), No. 113, § 1; A.S.A. 1947, § 71-5604.

17-49-105. Enforcement.

It is the duty of the county sheriff and other law enforcement officers in each county and the prosecuting attorney for each county to enforce the provisions of this subchapter.

History. Acts 1983, No. 587, § 12; A.S.A. 1947, § 71-5612.

17-49-106. Registration required — Penalty for violation.

(a) It is unlawful for any transient merchant to transact business in any county in this state unless the merchant and the owners of any goods, wares, or merchandise to be offered for sale or sold, if such are not owned by the merchant, shall have first secured a registration certificate and shall have otherwise complied with the requirements of this subchapter.

(b) Any person or entity that transacts a transient business as defined in § 17-49-103 without having first registered in accordance with the provisions of this subchapter, or who knowingly advertises, offers for sale, or sells any goods, wares, merchandise, or services in violation of the provisions of this subchapter, shall be guilty of a Class A misdemeanor.

(c) The penalty prescribed in this section shall be in addition to any other penalties prescribed by law for any criminal offense committed by the licensee.

History. Acts 1983, No. 587, §§ 5, 11; A.S.A. 1947, §§ 71-5605, 71-5611; Acts 2007, No. 1603, § 3.

Amendments. The 2007 amendment substituted “Registration” for “License” in the section heading; substituted “registra-

tion certificate” for “license” in (a); and substituted “registered” for “obtained a license” in (b).

Cross References. Penalties for misdemeanors, §§ 5-4-201, 5-4-401.

17-49-107. Registration for business.

(a) Any transient merchant desiring to transact business in any county in this state shall register in each county in which the merchant desires to transact business.

(b) The registration shall be filed with the county clerk and shall include the following information:

(1) The name and permanent address of the transient merchant making the application and, if the applicant is a firm or corporation, the name and address of the members of the firm or the officers of the corporation, as the case may be;

(2) If the applicant is a corporation, there shall be stated on the application form the date of incorporation, the state of incorporation, and, if the applicant is a corporation formed in a state other than the State of Arkansas, the date on which the corporation qualified to transact business as a foreign corporation in the State of Arkansas;

(3) A statement showing the kind of business proposed to be conducted, the length of time for which the applicant desires to transact such business, and the location of the proposed place of business;

(4) The name and permanent address of the transient merchant’s registered agent or office;

(5) Proof that the applicant has acquired all other required city, county, and state permits and licenses; and

(6) There shall be attached to the application a receipt or statement showing that any personal property taxes due on goods, wares, or merchandise to be offered for sale have been paid.

(c) The county clerk in each county shall design and cause to be printed appropriate forms for applications for registration and for the registration certificates to be issued to applicants under this subchapter.

History. Acts 1983, No. 587, §§ 6, 7; A.S.A. 1947, §§ 71-5606, 71-5607; Acts 2007, No. 1603, § 4.

Amendments. The 2007 amendment substituted "Registration for business" for "Application for license" in the section

heading; substituted "register" for "make application for and obtain a license" in (a); substituted "registration" for "application for license" in (b); and substituted "registration" for "license" and "licenses" in (c).

17-49-108. Service of process, notice, or demand.

(a) Each registered agent designated by a transient merchant shall be a resident of the county and shall be agent of the transient merchant upon whom any process, notice, or demand required or permitted by law to be served upon the transient merchant may be served.

(b) The registered agent shall agree in writing to act as such agent, and a copy of the agreement to so act shall be filed by the transient merchant with the registration.

(c) The county clerk of each county shall maintain an alphabetical list of all transient merchants in the county and the names and addresses of their registered agents.

(d) If any transient merchant doing business or having done business in any county within the state shall fail to have or maintain a registered agent in the county or if the registered agent cannot be found at his or her permanent address, the county clerk shall be an agent of the transient merchant for service of all process, notices, or demands.

(e) Service on the county clerk shall be made by delivering to and leaving with him or her, or any person designated by the clerk to receive the service, duplicate copies of the process, notice, or demand.

(f) When any process, notice, or demand is served on the clerk, he or she shall immediately cause one (1) copy to be forwarded by registered or certified mail to the permanent address of the transient merchant.

(g) The provisions of this section shall not limit or otherwise affect the right of any person to serve any process, notice, or demand in any other manner now or hereafter authorized by law.

History. Acts 1983, No. 587, § 8; A.S.A. 1947, § 71-5608; Acts 2007, No. 1603, § 5.

Amendments. The 2007 amendment deleted "in the application for a license"

following "by a transient merchant" in (a); and in (b), substituted "transient merchant" for "applicant" and "registration" for "application for a license."

17-49-109. Registration fee and bond.

(a) Each application for a transient merchant registration certificate shall be accompanied by a registration fee of fifty dollars (\$50.00) and by a cash bond or a surety bond issued by a corporate surety authorized to do business in the state in the amount of two thousand dollars

(\$2,000) or five percent (5%) of the wholesale value of any goods, wares, merchandise, or services to be offered for sale, whichever sum is lesser.

(b) The surety bond shall be in favor of the State of Arkansas and shall assure the payment by the applicant of all taxes that may be due from the applicant to the state or any political subdivision of the state, the payment of any fines that may be assessed against the applicant or its agents or employees for violation of the provisions of this subchapter, and for the satisfaction of all judgments that may be rendered against the transient merchant or its agents or employees in any cause of action commenced by any purchaser of goods, wares, merchandise, or services within one (1) year from the date of the sale by the transient merchant.

(c) The bonds shall be maintained so long as the transient merchant conducts business in the county and for a period of one (1) year after the termination of the business. The bonds shall be released only when the transient merchant furnishes satisfactory proof to the county clerk that it has satisfied all claims of purchasers of goods, wares, merchandise, or services from the merchant and that all state and local sales taxes and other taxes have been paid.

History. Acts 1983, No. 587, § 9; A.S.A. 1947, § 71-5609; Acts 2007, No. 1603, § 6.

Amendments. The 2007 amendment substituted “Registration” for “License” in the section heading; and in (a), substi-

tuted “registration certificate” for “license” and “registration fee of fifty dollars (\$50.00)” for “license fee of two hundred fifty dollars (\$250).”

17-49-110. Issuance and terms of registration certificate.

(a) A transient business registration certificate shall be issued under this section only when all requirements of this subchapter have been met.

(b) The registration certificate shall:

- (1) Not be transferable;
- (2) Be valid only within the territorial limits of the issuing county;
- (3) Be valid only for a period of ninety (90) days; and
- (4) Be valid only for the business stated in the application.

(c) A registration certificate so issued shall be valid for only one (1) person, unless the person is a member of a partnership or employee of a firm or corporation obtaining the registration certificate.

History. Acts 1983, No. 587, § 10; A.S.A. 1947, § 71-5610; Acts 2007, No. 1603, § 7.

Amendments. The 2007 amendment

substituted “registration certificate” for “license” in the section heading and throughout the section; and made stylistic changes.

SUBCHAPTER 2 — ITINERANT MERCHANTS

SECTION.

17-49-201. Purpose.

17-49-202. Definitions.

17-49-203. Procedure for exemption.

17-49-204. Penalties.

SECTION.

17-49-205. Enforcement.

17-49-206. County or municipal authority to tax or license.

17-49-207. License required.

SECTION.
17-49-208. Application for license.
17-49-209. License expiration and re-
newal — Fees.
17-49-210. Bonds and insurance.
17-49-211. Suits against merchant and
surety.

SECTION.
17-49-212. Power of attorney — Service
of summons.
17-49-213. Issuance and use of license.
17-49-214. License revocation.

Cross References. Licenses and per-
mits, removal of disqualification for crimi-
nal offenses, § 17-1-103.

17-49-201. Purpose.

(a) Peddlers have always been recognized as a special class, subject to special laws regulating, licensing, and policing the class. This is based on their particular way of doing business, upon the fact that many of them contribute nothing or very little in the way of taxes and otherwise to the support and building of the communities in which they operate, on the unscrupulous methods of some of them, and on other valid considerations. The advent of the motor truck and the improved roads has brought about the existence of a special class of peddlers by motor truck who combine all of the old attributes of the class with the present ability to cover a wide territory and handle goods in large quantities. This has created serious and pressing problems of preserv- ing local communities from deterioration and even extinction through the destruction of local established business, of maintaining adequate price levels of commodities so as to insure a fair return to producers and to justify local merchants in carrying adequate stocks of merchandise to meet the regular needs of their communities, of law violation in commercial transactions, of loss of tax revenue, and of highway haz- ards.

- (b) It is the purpose of this subchapter to:
- (1) Define the class of peddlers by motor vehicle without burdening local established producers, merchants, and manufacturers;
 - (2) Regulate the class to avoid existing evils; and
 - (3) Assess and collect taxes due the state from this class.

History. Acts 1941, No. 138, § 1; A.S.A.
1947, § 84-2401.

17-49-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) “Department” means the Department of Finance and Adminis-
tration;

(2)(A) "Established place of business" means any permanent warehouse, building, or structure:

(i) At which a permanent business is carried on in good faith, and not for the purpose of evading this subchapter, during usual business hours throughout the year or usual production season;

(ii) At which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for, and usually carried for, the requirements of such a business; and

(iii) Which is recognized, and licensed or taxed, as a permanent business at that place.

(B) "Established place of business" shall not mean residences or premises or buildings appurtenant thereto, tents, temporary stands, or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangements;

(3) "Highway" means any thoroughfare defined by any statute or ordinance as a public highway or street;

(4) "Highway patrol" means the Department of Arkansas State Police or any other duly authorized officers authorized to patrol the highways of the state, counties, or cities;

(5)(A) "Itinerant merchant" means, except as otherwise provided in subdivision (5)(B) of this section, any person who sells or offers to sell in this state, at wholesale or retail, any personal property and transports it on any highway in this state by use of a motor vehicle.

(B) "Itinerant merchant" shall not mean or include the following:

(i) A person who does not at any time transport in a motor vehicle a net load exceeding two thousand pounds (2000 lbs.);

(ii) A person using a motor vehicle owned by him or her, whether operated by him or her or his or her agent, for the transportation of milk, dairy products, grains, fruits, vegetables, livestock, poultry, or other agricultural products, produced or fed by him or her on a farm operated by him or her either within or without this state, or for the transportation of newspapers, magazines, or books;

(iii) A person transporting property owned by him or her in a motor vehicle owned by him or her, whether operated by him or her or his or her agent, when such transportation is incident to a business conducted by him or her at an established place of business operated by him or her either within or without this state and when the property is being transported to or from the established place of business, or when the transportation pertains to the buying or selling from a vehicle operated by an established place of business as defined in subdivision (2) of this section, or when the entire course of the transportation is for the purpose of delivery of the property subsequent to sale or trade thereof;

(iv) A person transporting property owned by him or her in a truck, tank truck, or other vehicle owned or leased by him or her, his or her agent, or employee, whether operated by him or her, his or her agent, or employee, when the property is loaded, pumped, or otherwise placed upon or into the vehicle from or at a warehouse, distributing

station, or other established place of business owned, leased, or operated by such person, his or her agent, or employee, whether within or without this state, for sale, distribution, or delivery in the conduct of the established business;

(v) A person transporting property for his or her own consumption or use and not for sale, or to be processed by him or her;

(vi) A person authorized to operate as a common or contract carrier of property by motor vehicle under Part II of the Interstate Commerce Act [repealed] or the laws of this state, when operating in such for-hire capacity; or

(vii) A person using a motor vehicle whether operated by him or her or his or her agent for the transportation of dairy products, fruits, grains, vegetables, livestock, poultry, or other unprocessed agricultural products produced or fed within this state;

(6) "Motor vehicle" means any automobile, automobile trucks, truck, or any other self-propelled vehicle not operated or driven upon fixed rails or track. The term shall include as one (1) vehicle a tractor-semi-trailer or tractor-trailer combination;

(7) "Person" means a natural person, firm, partnership, association, corporation, trust, lessee, trustee, or receiver, as the context may require, regardless of the gender of the pronoun used in conjunction therewith; and

(8) "Sale", "sell", "buy", or any grammatical forms thereof mean barter, trade, or exchange, in addition to the usual and ordinary meanings of such terms. This definition shall not be construed to diminish the meanings of these words but shall extend such meanings.

History. Acts 1941, No. 138, § 2; A.S.A. 1947, § 84-2402.

17-49-203. Procedure for exemption.

(a) No person shall be exempt from the requirements of this subchapter by reason of the provisions of § 17-49-202(5)(B) unless he or she or the driver of the motor vehicle upon which his or her property is being transported shall, upon the request of any state, county, or township officer sworn to preserve the peace, sign and swear to under oath before some person authorized by the laws of this state to administer oaths and deliver to the officer a statement in writing clearly showing that the person claiming the exemption is entitled to one (1) or more of the exemptions provided in this section.

(b) The Department of Finance and Administration or its duly authorized agents, or any highway patrolmen, sheriff, or other peace officer, for the purpose of the enforcement of this subchapter, shall have authority to administer oaths and take acknowledgments of the oaths.

(c) If the person claiming the exemption is not a natural person, the statement shall be signed and sworn to by some natural person authorized to act for it or the driver of the motor vehicle carrying the property. The statement shall not be sufficient unless it shall contain, in

addition to any other necessary facts, the following of such facts as are material to the particular exemption claimed:

(1) The name of the person claiming the exemption and name of the person signing the statement;

(2) The business and residence addresses of both;

(3) Where and when the products described in § 17-49-202(5)(B)(ii) were produced or fed, the place where they are to be delivered if known, and the acreage operated by the person claiming the exemption;

(4) The location of the established place of business, how long there established, and whether the premises where located are owned or leased by the person claiming the exemption; and

(5) The kind of business there conducted.

(d) The officer receiving the statement shall promptly forward it to the department where it shall be filed and shall be a public record.

(e) Any person knowingly making any false, material statement in the statement shall be guilty of perjury and shall upon conviction be punished as provided by law.

History. Acts 1941, No. 138, § 2; A.S.A. 1947, § 84-2402.

17-49-204. Penalties.

(a) Any person violating any provision of this subchapter shall be guilty of a misdemeanor, except as herein otherwise provided, and shall upon conviction be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for a period of not less than thirty (30) days nor more than one hundred (100) days. Each day's operation in violation of any provision of this subchapter shall be a separate offense.

(b) Any motor vehicle operated in violation of this subchapter shall be kept in the custody of any state, county, or township officer sworn to preserve the peace and shall not be operated except under his or her authority and solely for the purpose of taking it to the nearest convenient place of custody until the provisions of this subchapter have been complied with.

History. Acts 1941, No. 138, §§ 12, 15; A.S.A. 1947, §§ 84-2412, 84-2414.

17-49-205. Enforcement.

It shall be the duty of the Department of Finance and Administration or its authorized agents, the Department of Arkansas State Police, and all peace officers to enforce this chapter.

History. Acts 1941, No. 138, § 18; A.S.A. 1947, § 84-2416.

17-49-206. County or municipal authority to tax or license.

Nothing in this subchapter shall be construed to repeal or amend any statute delegating authority to any county or municipal corporation to license, tax, or regulate peddlers or itinerant merchants.

History. Acts 1941, No. 138, § 14;
A.S.A. 1947, § 84-2413.

17-49-207. License required.

No person shall engage in business or use any motor vehicle in this state as an itinerant merchant, as defined and fixed in § 17-49-202, without complying with this subchapter and without obtaining from the Department of Finance and Administration the license required by this subchapter.

History. Acts 1941, No. 138, § 3; A.S.A.
1947, § 84-2403.

17-49-208. Application for license.

(a) An application for a license as an itinerant merchant shall be made to the Department of Finance and Administration through any of its authorized agents upon forms to be prepared by the department.

(b) A separate application and license shall be required for each motor vehicle to be operated.

(c) In addition to any other essential information required by the department, the application shall state the following:

- (1) The name and legal status of the applicant;
- (2) His or her business address;
- (3) If a natural person, his or her residence address;
- (4) If not a natural person, the names and business and residence addresses of the principal and managing officers, agents, or partners;
- (5) A general description of the business to be conducted and the area in this state in which it will be conducted; and

(6) An exact description of the motor vehicle to be used, including the make, type, manufacturer's rated loading capacity, motor number, serial number, place where registered, and registration or license number.

(d) The application shall be signed and sworn to by the applicant or his or her authorized agent if a natural person or, if not a natural person, by some agent, officer, or partner authorized to act for it.

History. Acts 1941, No. 138, § 4; A.S.A.
1947, § 84-2404.

17-49-209. License expiration and renewal — Fees.

(a)(1) The fee for each license, except as herein otherwise provided, shall be fifty dollars (\$50.00) per year.

(2) However, if the license is issued after June 30 in any year, the license fee shall be twenty-five dollars (\$25.00).

(3) The proper fee shall accompany the application.

(b) All licenses issued and license fees paid shall be for the calendar year only in which issued or paid and shall expire at the end of the calendar year.

History. Acts 1941, No. 138, § 5; A.S.A. 1947, § 84-2405.

17-49-210. Bonds and insurance.

(a) No license shall be issued by the Department of Finance and Administration until the applicant has filed with each application the following insurance policies and bonds issued by an insurance company or bonding company authorized to do business within this state, which have been approved by the department:

(1) A bond in the penal sum of five hundred dollars (\$500) in a form as may be prescribed by the department, conditioned to pay any license fees and taxes, and penalties and interest thereon, due this state or any governmental subdivision thereof by reason of the failure of the itinerant merchant to pay any such license fees and taxes;

(2) A bond in the penal sum of one thousand dollars (\$1,000) in a form as may be prescribed by the department:

(A) For the purpose of protecting the public against fraud, conditioned upon the delivery of honest weights, measures, footage, or grades if the commodities handled by the itinerant merchant are those customarily sold by weights, measures, footage, or grades, accurate representation as to quality or class of the commodities, the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of commodities; and

(B) Conditioned to pay any judgment or judgments that may be obtained against the itinerant merchant for civil liability arising out of the conduct of his or her business, including the matters specified in subdivision (a)(2)(A) of this section, but not including any causes of action covered by the insurance policies described in subdivision (a)(3) of this section. The bond shall further provide that any person dealing with the itinerant merchant, any person using the commodities handled by him or her, and any person holding checks, drafts, or other obligations shall have cause of action upon the bond by reason of any violation of the terms of the bond with respect to the dealing, the commodities, checks, drafts, or other obligations;

(3) A liability insurance policy or bond which shall bind the obligors to pay compensation for injuries to persons and damage to property resulting from the negligent operation of the motor vehicle operated under authority of the itinerant merchant's license, the policy or bond to be conditioned to pay any sum up to five thousand dollars (\$5,000) for personal injury to or death of one (1) individual, up to ten thousand dollars (\$10,000) for personal injuries or deaths resulting from any

single accident, and up to one thousand dollars (\$1,000) for damage to property in any single accident.

(b)(1) Every insurance policy and bond filed with the department under the provisions of this chapter shall contain an endorsement or provision that they shall not be cancelled by the obligor, shall not expire, and shall not become reduced in amount until fifteen (15) days after notice by registered United States mail has been sent to the department of the intention to cancel them, or that they are to expire or are to be reduced in amount.

(2) Upon receipt of such a notice, the department shall immediately notify the itinerant merchant by registered United States mail, return receipt requested, of the receipt of the notice and shall advise him or her that unless a new insurance policy or bond is filed to replace the one to be cancelled, to expire, or to be reduced in amount, prior to the time the cancellation, expiration, or reduction becomes effective, the license of the itinerant merchant in connection with which the policy or bond was issued shall be revoked at the time the cancellation, expiration, or reduction becomes effective.

(3) If a new policy or bond is not filed or the amount of reduction restored prior to the time the cancellation, expiration, or reduction becomes effective, the department must revoke the license at that time, and the licensee shall return the license and license plate to the department.

History. Acts 1941, No. 138, § 6; A.S.A. 1947, § 84-2406.

17-49-211. Suits against merchant and surety.

Any person having a cause of action against the itinerant merchant arising out of the matters described in § 17-49-210(a)(1) and (2):

(1) May join the itinerant merchant and the surety on his or her bond in the same action; or

(2) May sue the surety without joining the itinerant merchant in the action if the itinerant merchant is deceased or if it is impossible to obtain jurisdiction of his or her person within the state where the cause of action arose.

History. Acts 1941, No. 138, § 6; A.S.A. 1947, § 84-2406.

17-49-212. Power of attorney — Service of summons.

Before a license shall be issued, the applicant shall sign and file with the Department of Finance and Administration an irrevocable power of attorney appointing the department his or her agent to accept service of summons for all causes of action against him or her arising out of the conduct of his or her business as an itinerant merchant and the operation of the motor vehicle described in the application.

History. Acts 1941, No. 138, § 7; A.S.A. 1947, § 84-2407.

17-49-213. Issuance and use of license.

(a) Upon the approval and issuance of the application and upon compliance with the terms of this subchapter, the Department of Finance and Administration shall issue to the applicant a license as an itinerant merchant.

(b) The license shall:

- (1) Be numbered;
- (2) Show the amount of fees paid;
- (3) Specifically describe the itinerant merchant and the motor vehicle as they are described in the application;
- (4) At all times be carried in the cab of the motor vehicle described; and

(5) At all times be subject to inspection by any officer authorized to enforce this subchapter.

(c) The department shall also issue to the itinerant merchant a license plate containing the same number as the license, of distinctive color and size, which shall at all times be displayed on the rear of the motor vehicle described in the license.

(d) No license or license plate issued pursuant to this subchapter may be sold or transferred, and no license or license plate may be transferred from one vehicle to another.

History. Acts 1941, No. 138, §§ 8, 9; A.S.A. 1947, §§ 84-2408, 84-2409.

17-49-214. License revocation.

Upon such notice and hearing as the Department of Finance and Administration may deem proper, it may revoke any license issued under the provisions of this subchapter for failure to comply with any of the laws of this state, or if any judgment recovered against any itinerant merchant remains unpaid for a period of sixty (60) days, provided the judgment is not supersedeas as bond upon appeal from the judgment.

History. Acts 1941, No. 138, § 10; A.S.A. 1947, § 84-2410.

SUBCHAPTER 3 — ITINERANT ENTREPRENEURS

SECTION.

17-49-301. Definitions.

17-49-302. Registration required.

SECTION.

17-49-303. Exemption.

17-49-304. Penalty.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1963, No. 256, § 4: Mar. 18, 1963. Emergency clause provided: "It has been found and is declared by the General Assembly that much of effective regulation of itinerant entrepreneurs leaves the public prey to false deal-

ing and cheating; that it is imperative that this danger be eradicated; and that enactment of this measure will provide the remedy. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in force from the date of its approval."

17-49-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Itinerant entrepreneur" means a person or firm who trades in goods or services for construction, improvement, or maintenance of houses or farm buildings or structures, who travels about, and who has no established place of business in the county of at least ninety (90) days' standing; and

(2) "Itinerant entrepreneur" shall not include any person or firm licensed as a contractor by the Contractors Licensing Board.

History. Acts 1963, No. 256, § 1; A.S.A. 1947, § 71-1901.

17-49-302. Registration required.

Before engaging in business in any county, an itinerant entrepreneur shall register with the sheriff thereof his or her name and address and the nature of his or her business.

History. Acts 1963, No. 256, § 2; A.S.A. 1947, § 71-1902.

17-49-303. Exemption.

The provisions of this subchapter shall not apply to goods or services contracted for upon public or private advertised bids.

History. Acts 1963, No. 256, § 3; A.S.A. 1947, § 71-1903.

17-49-304. Penalty.

A person who violates this subchapter shall be fined in any sum not to exceed five hundred dollars (\$500).

History. Acts 1963, No. 256, § 3; A.S.A. 1947, § 71-1903.

CHAPTER 50

WATER WELL CONSTRUCTORS

SUBCHAPTER.

1. GENERAL PROVISIONS.
 2. COMMISSION ON WATER WELL CONSTRUCTION.
 3. CERTIFICATES, LICENSES, AND PERMITS.
 4. ARKANSAS WATER WELL RIG CONFISCATION ACT.
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A.C.R.C. Notes. Acts 1987, No. 693, § 2, provided, in part, that “committee” as created by Acts 1969, No. 641, § 5, as amended, means “commission” or “Arkansas Water Well Construction Commis-

sion.” Accordingly, references to “committee” have been changed to “commission.”

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-43-101 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Looney, Modification of Arkansas Water Law: Issues and Alternatives, 38 Ark. L. Rev. 221 (1984).

U. Ark. Little Rock L.J. Trelease, A Water Management Law For Arkansas, 6 U. Ark. Little Rock L.J. 369 (1983).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-50-101. Title.
- 17-50-102. Purpose.
- 17-50-103. Definitions.
- 17-50-104. Violations.
- 17-50-105. Criminal penalties.
- 17-50-106. Alternative civil penalties.

SECTION.

- 17-50-107. Scope.
 - 17-50-108. Exemptions — Limitations.
 - 17-50-109. Enforcement procedure.
 - 17-50-110. Applicability of Arkansas Administrative Procedure Act.
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Cross References. Contractor’s Bonds, § 17-25-401 et seq.

Effective Dates. Acts 1969, No. 641, § 22: May 27, 1969. Emergency clause provided: “It is hereby found and determined by the General Assembly that the available supply of usable water is being depleted or polluted at a rapidly increasing rate; that it is necessary to take protective measures to conserve a potable supply of such water for future generations; that such water supply can be partially assured through reasonable controls of water well and pump installation contractors, and in order to conserve our natural supply of usable water, to protect the health of our people and to insure a more effective use of the existing water supply, it is necessary that this act become

effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1985, No. 822, § 3: July 1, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that immediate passage of this act is necessary to prevent irreparable harm to the underground water resources of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985.”

Acts 1987, No. 693, § 11: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act should go into effect at the beginning of the next fiscal year; that the next fiscal year begins on July 1, 1987; that unless this Emergency Clause is adopted, this Act may not go into effect until after July 1, 1987. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 2003, No. 297, § 16: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that water wells are currently being improperly drilled in a manner that poses an imminent threat to the water supply in this state; and that the protections included in this act must be implemented immediately to prevent injury to the public. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

17-50-101. Title.

This chapter shall be known and cited as the "Arkansas Water Well Construction Act".

History. Acts 1969, No. 641, § 1; A.S.A. 1947, § 21-2001.

17-50-102. Purpose.

(a) In that there is an ever-increasing demand for water in this state necessitating the construction of water wells, it is imperative that the general health, safety, and welfare be protected by providing a means for the proper development of the natural resource of underground water in an orderly, sanitary, reasonable, and safe manner, without waste, so that sufficient potable supplies for the continued economic growth of our state may be assured. To that end it is essential that persons engaged in water well drilling cooperate with the State of Arkansas in the development of ground water resources.

(b) In that there is an ever-increasing demand for water in this state necessitating the construction of water wells and pump installation, it is imperative that the general health, safety, and welfare be protected by providing the Commission on Water Well Construction with jurisdiction over pump installation, which is an inherent part of water well construction. The regulation of pump installation and installers is essential to fulfill the intent of this chapter.

History. Acts 1969, No. 641, § 2; A.S.A. 1947, § 21-2002; Acts 1987, No. 693, § 1.

17-50-103. Definitions.

As used in this chapter:

(1) "Abandoned water well" means a well whose use has been permanently discontinued or which is in such a state of disrepair that continued use for the purpose of obtaining ground water is impractical;

(2) "Apprentice" means a natural person who under the supervision of a registered pump installer or registered water well driller is obtaining the knowledge, skills, and abilities necessary to obtain a certificate of registration as a pump installer or water well driller;

(3) "Apprenticeship program" means a program developed by the Commission on Water Well Construction pursuant to § 17-50-312 to develop certain minimum knowledge, skills, or abilities in those natural persons desiring registration as pump installers or water well drillers;

(4) "Commission" means the Commission on Water Well Construction as created by § 17-50-201;

(5) "Continuing education" means a program approved by the commission designed to provide certificate or license holders further knowledge, skills, or abilities in water well construction, pump installation, or related activities;

(6) "Heat pump circulating pipe" means pipes that circulate fluid in heat pump wells and are a part of heat pump well construction but are not considered pumping equipment;

(7)(A) "Heat pump wells" means any excavation that is drilled, redrilled, cored, bored, washed, driven, dug, jetted, or otherwise artificially constructed for the purpose of obtaining or exchanging geothermal energy for use with ground water source air conditioning or heat pump systems.

(B) The excavation may have pipes installed inside the excavation to circulate or discharge various fluids for the use and purpose set out in this subdivision (7), and the well may or may not be backfilled after excavation;

(8) "Person" means any natural person, partnership, association, business trust, and public or private corporation;

(9) "Pitless adapter" means an underground or above-ground discharge assembly that attaches directly to the well casing and extends the casing above the ground surface, providing a watertight subsurface connection for conducting water from the well, sealing out contaminants, protecting the water from temperature extremes, and providing access to the pump or other systems within the well;

(10) "Pump installer" means any natural person who engages for compensation in pump installation or repair and who is authorized to plug abandoned water wells and to install pitless adapters;

(11)(A) "Pumping equipment" means all machinery and parts of pumps such as deep well turbine pumps with right angle gear drive, vertical hollow shaft motors, jet pumps and motors, submersible pumps and motors, and other parts and fittings installed or attached to the well.

(B) "Pumping equipment" shall exclude cooling units, horizontal electric motors, heat pump circulating pipe, and stationary diesel or gas engines;

(12) "Repair" means any action which results in a breaking, opening, or replacement of a well seal or cap;

(13) "Rig" means any power-driven, percussion, rotary, digging, jetting, direct push, vibrating, hydrofracturing, or augering machine used

in the construction, alteration, repair, or abandonment of water wells, or any hoist or machine used in installing or removing pumps from wells with a lifting capacity of one thousand pounds (1,000 lbs.) or more;

(14)(A) "Water well" means any excavation that is drilled, redrilled, cored, bored, washed, driven, dug, jetted, or otherwise artificially constructed for the purpose of locating, acquiring, diverting, or artificially recharging ground water.

(B)(i) "Water well" shall also include excavations made for the purpose of exchanging the geothermal energy found in the earth as defined in subdivision (7) of this section.

(ii) "Water well" shall not include an excavation made for the purpose of:

(a) Obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying;

(b) Inserting media to repressure oil or natural gas-bearing formations; or

(c) Storing petroleum, natural gas, or other products;

(15) "Water well contractor" means any person who engages in the business of well construction or pump installation or repair, exclusive of surveying or other acts preparatory to the construction of a water well;

(16) "Water well driller" means any natural person who engages for compensation in well construction in this state; and

(17) "Well construction" means the act of setting up the rig for and engaging in the excavation of a water well, the modification of the borehole, the setting or removal of casing up to the point of installing or repairing pump equipment, and plugging abandoned water wells.

History. Acts 1969, No. 641, § 3; 1985, 1987, No. 693, § 2; 2001, No. 1184, § 1; No. 822, § 1; A.S.A. 1947, § 21-2003; Acts 2003, No. 297, § 1.

17-50-104. Violations.

(a) It shall be unlawful and a violation of this chapter, unless exempted under the provisions of §§ 17-50-107(b) and 17-50-108(b), for:

(1) Any person to engage in well construction or pump installation unless the work is performed under the supervision of an individual certified by the Commission on Water Well Construction in the type of work done;

(2)(A) Any water well contractor to fail to deliver a report on water well construction to the commission within ninety (90) days after completion of well construction.

(B) The report on water well construction shall contain such information as may be requested by appropriate rules and regulations of the commission and shall be upon forms supplied by the commission;

(3) Any person to install, construct, repair, or alter a water well or water well pumping equipment which is not in compliance with appropriate rules and regulations or is a health hazard;

(4) A person to operate a rig without a permit as prescribed in § 17-50-310; or

(5) A person to enter into a contract for well construction or pump installation or hold himself or herself out in the business as a water well contractor without posting bond or bond fee and holding a license as provided in §§ 17-50-304 — 17-50-309.

(b) Every day or any part of a day in which a violation occurs shall constitute a separate offense.

History. Acts 1969, No. 641, § 12; 693, § 7; 1999, No. 69, § 1; 2001, No. A.S.A. 1947, § 21-2012; Acts 1987, No. 1184, § 2; 2003, No. 297, § 2.

17-50-105. Criminal penalties.

(a) Any person who violates § 17-50-104 shall be guilty of a Class A misdemeanor.

(b) Any person who violates any other provision of this chapter, regulations issued under this chapter, or order pursuant to this chapter shall be guilty of a Class B misdemeanor.

(c) Every day, or any part of a day, in which the violation occurs shall constitute a separate offense.

(d) Any person found guilty of a Class A or Class B misdemeanor for violation of any provision of this chapter who continues to engage in the behavior or activity giving rise to violation shall be guilty of a Class D felony for the second or any subsequent offense.

(e) Persons described in this section may be arrested by any sheriff, constable, chief of police, or other law enforcement officer of this state or any political subdivision of this state.

History. Acts 1969, No. 641, § 18; A.S.A. 1947, § 21-2018; Acts 2003, No. 297, § 3.

17-50-106. Alternative civil penalties.

(a) Whenever the Commission on Water Well Construction, after a hearing conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., finds that a person has violated the provisions of this chapter or any rules or regulations promulgated by the commission pursuant to the authority granted in this chapter, the commission shall have the power and authority to impose a civil penalty on the person in lieu of prosecuting the person under § 17-50-105.

(b) If a person against whom a civil penalty has been imposed by the commission, as authorized in this section, fails to pay the penalty to the commission, the commission may file action in the Pulaski County Circuit Court to collect the civil penalty.

(c) If the commission prevails in the action, the defendant shall be directed to pay, in addition to the civil penalty, reasonable attorney's fees and costs of the commission for prosecuting the action.

(d) No civil penalty shall be assessed by the commission against any person if that person is prosecuted under § 17-50-105.

(e) The commission shall not assess a civil penalty in excess of two thousand five hundred dollars (\$2,500) per offense.

History. Acts 1981, No. 521, § 3; A.S.A. 1947, § 21-2018.1; Acts 2003, No. 297, § 4.

17-50-107. Scope.

(a) No person shall construct, repair, or abandon, or cause to be constructed, repaired, or abandoned, any water well without complying with the provisions of this chapter and the rules and regulations adopted pursuant to it.

(b) The provisions of this chapter and rules and regulations adopted pursuant to it shall not be construed to repeal the provisions of any other law or ordinance of any municipality establishing standards with respect to water well drilling or pump installation and shall prevail concurrently with such other law or ordinance.

History. Acts 1969, No. 641, §§ 4, 20; A.S.A. 1947, §§ 21-2004, 21-2020.

17-50-108. Exemptions — Limitations.

(a) Where the Commission on Water Well Construction finds that compliance with all requirements of this chapter would result in undue hardship, an exemption from any one (1) or more such requirements may be granted by the commission to the extent the exemption can be granted without impairing the intent and purpose of this chapter.

(b) Nothing in this chapter or any rule, regulation, or order pursuant to it shall prevent a person who has not obtained a license pursuant to §§ 17-50-303 and 17-50-304 from constructing, altering, or repairing a water well or installing or repairing a pump or pumping equipment for use by him or her on his or her own land. This chapter shall not apply to any person owning, operating, and maintaining on May 27, 1969, any such well unless it constitutes a public health hazard.

(c)(1)(A) No well in existence on May 27, 1969, shall be required to conform to the provisions of § 17-50-205 or any rules or regulations adopted pursuant thereto.

(B) However, any well abandoned or repaired, including any well deemed to have been abandoned, as defined in this chapter, shall be brought into compliance with the requirements of this chapter and applicable rules or regulations with respect to abandonment of wells.

(2) Any well supplying water which is determined by the commission to be a health hazard must comply with the provisions of this chapter and applicable rules and regulations within a reasonable time after notification of the determination has been given.

(d) This chapter shall not apply to any distribution of water beyond the point of discharge from any storage or pressure tank, or beyond the

point of discharge from the pump if no tank is employed, nor to any well, pump, or other equipment used temporarily for dewatering purposes.

(e) A county, municipality, or other political subdivision of the state engaged in well drilling shall be exempt from paying the license or rig fees for the operations performed for the political subdivision by employees of and with equipment owned by the governmental entity.

History. Acts 1969, No. 641, §§ 4, 8, 13, 2013, 21-2019; Acts 1987, No. 693, §§ 8, 9; 19; A.S.A. 1947, §§ 21-2004, 21-2008, 21-1993, No. 328, § 3; 1993, No. 348, § 3.

17-50-109. Enforcement procedure.

Whenever the Commission on Water Well Construction has reasonable grounds for believing that there has been a violation of this chapter or any rule or regulation adopted pursuant to this chapter, the commission may enforce compliance in the following manner:

(1) The commission shall give written notice to the person or persons alleged to be in violation;

(2) The notice shall identify the provisions of this chapter or regulation issued hereunder alleged to be violated and the facts alleged to constitute the violation;

(3) The notice shall be served in the manner required by law for the service of process upon a person in a civil action or by an employee of the commission and may be accompanied by an order of the commission requiring described remedial action which, if taken within the time specified in the order, will effect compliance with the requirements of this chapter and regulations issued under this chapter;

(4) The order shall become final unless a written request for hearing before the commission is made within ten (10) days from the date of service of the order; and

(5) In lieu of such an order, the commission may require the person or persons named in the notice to appear at a hearing, at a time and place specified in the notice, after which an appropriate remedial order may issue.

History. Acts 1969, No. 641, § 16; A.S.A. 1947, § 21-2016; Acts 2003, No. 297, § 5.

17-50-110. Applicability of Arkansas Administrative Procedure Act.

(a) Any and all proceedings taken under this chapter shall be subject to and conducted in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., unless otherwise provided by the provisions of this chapter.

(b) Any person aggrieved by any action of the commission pursuant to the authority granted in this chapter may appeal the decision in the manner and procedure prescribed for appeals from other administra-

tive decisions in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1969, No. 641, § 17; 1981, No. 521, § 3; A.S.A. 1947, §§ 21-2017, 21-2018.1.

SUBCHAPTER 2 — COMMISSION ON WATER WELL CONSTRUCTION

- SECTION.
- 17-50-201. Creation — Members.
 - 17-50-202. Employees.
 - 17-50-203. Office.
 - 17-50-204. Powers and duties.
 - 17-50-205. Inspections.
 - 17-50-206. Disposition of funds.

- SECTION.
- 17-50-207. Injunctions — Liability of members.
 - 17-50-208. Proceedings before commission.
 - 17-50-209. Investigations.

Effective Dates. Acts 1969, No. 641, § 22: May 27, 1969. Emergency clause provided: “It is hereby found and determined by the General Assembly that the available supply of usable water is being depleted or polluted at a rapidly increasing rate; that it is necessary to take protective measures to conserve a potable supply of such water for future generations; that such water supply can be partially assured through reasonable controls of water well and pump installation contractors, and in order to conserve our natural supply of usable water, to protect the health of our people and to insure a more effective use of the existing water supply, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1987, No. 693, § 11: July 1, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that this Act should go into effect at the beginning of the next fiscal year; that the next fiscal year begins on July 1, 1987; that unless this Emergency Clause is adopted, this Act may not go into effect until after July 1, 1987. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987.”

Acts 1989, No. 748, § 4: Mar. 21, 1989. Emergency clause provided: “It is hereby found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that the available water supply is being depleted or polluted at a rapidly increasing rate in Arkansas; that it is necessary to take protective action to conserve a potable water supply for future generations; and that such water supply can be partially assured through reasonable controls of water well and pump installation contractors. Therefore, in order to conserve our natural water supply for the future, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the

Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor

may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-50-201. Creation — Members.

(a) There is created a Commission on Water Well Construction which shall exercise its duties as provided by this chapter.

(b) The commission shall consist of seven (7) members, composed of:

(1) The Director of the Department of Health or his or her designated representative;

(2) The Director of the Arkansas Natural Resources Commission or his or her designated representative;

(3)(A) One (1) person engaged in the business of manufacturing, distributing, or supplying heat pumps which require heat pump water wells.

(B) The person shall be recommended by the Arkansas Heat Pump Association or the EnviroEnergy Group or another groundwater source industry association.

(C) The person shall be a licensed HVACR contractor under § 17-33-101 et seq., and shall be appointed by the Governor and confirmed by the Senate; and

(4)(A) Four (4) persons who are, by trade, water well drillers.

(B) The water well drilling members shall be:

(i) Two (2) water well drillers whose principal place of business is southeast of the fall line in Arkansas, and who are actively engaged in the construction of water wells and pump installation in the Mississippi Embayment or Gulf Coastal Plain as represented on the geologic map of Arkansas; and

(ii) Two (2) water well drillers whose principal place of business is northwest of the fall line in Arkansas and who are actively engaged in the construction of water wells and pump installation business in the Ozark Region, Arkansas River Valley, or Ouachita Mountain Region as represented on the geologic map of Arkansas.

(C) These members shall be appointed by the Governor and confirmed by the Senate and shall be certified under the provisions of §§ 17-50-301 and 17-50-302.

(D) No person may be appointed as a water well driller member of the commission unless his or her principal place of business is at least twenty (20) miles in a straight line from any other water well driller members.

(c) Terms of office shall commence on January 15 and shall end on January 14 of the fifth year following the year in which the term commenced.

(d) Any vacancies arising on the membership of the commission for any reason other than expiration of the regular terms for which the

members were appointed shall be filled by appointment by the Governor, to be effective until the expiration of the regular terms, subject, however, to the confirmation of the Senate when it is next in session.

(e) The five (5) business and trade members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1969, No. 641, § 5; 1979, No. 80, § 1; A.S.A. 1947, § 21-2005; Acts 1995, No. 840, § 1; 1997, No. 250, § 152.

A.C.R.C. Notes. As originally amended by Acts 1995, No. 840, § 1, subsection (c) of this section read: "Terms of office of appointed members whose terms began before February 1st, 1995 shall commence on January 15 and shall end on January 14 of the fourth year following the year in which the term commenced. Terms of office of appointed members whose terms begin after January 31st, 1995 shall commence on January 15 and shall end on

January 14 of the fifth year following the year in which the term commenced."

Publisher's Notes. Acts 1987, No. 693, § 2, provided, in part, that "committee" as created by Acts 1969, No. 641, § 5, as amended, means "commission" or "Arkansas Water Well Construction Commission." Accordingly, references to "committee" have been changed to "commission."

The terms of the appointed members of the Commission on Water Well Construction are arranged so that one term expires every year.

17-50-202. Employees.

The Commission on Water Well Construction shall:

(1) Employ an executive secretary who, with the approval of the agency housing the commission's office, may be an employee of the agency; and

(2) Hire such other employees and contract for such legal and engineering services as may be necessary to perform its powers and duties under the provisions of this chapter and fix their salaries within such limitations as may be provided by law.

History. Acts 1969, No. 641, § 5; 1979, No. 80, § 1; A.S.A. 1947, § 21-2005.

17-50-203. Office.

The office of one (1) of the agencies represented on the Commission on Water Well Construction may be designated by the commission to house the office of the commission.

History. Acts 1969, No. 641, § 5; 1979, No. 80, § 1; A.S.A. 1947, § 21-2005.

17-50-204. Powers and duties.

(a) The Commission on Water Well Construction shall be responsible for the administration of this chapter and shall adopt, and from time to time amend or repeal, necessary rules and regulations governing the installation, construction, repair, and abandonment of water wells and pumping equipment. With respect thereto, it shall:

(1) Hold public hearings in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(2) Issue such orders and take such other actions as may be necessary to enforce the provisions of this chapter and the rules and regulations adopted pursuant thereto;

(3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this chapter;

(4) Prepare subject matter for examinations to test the knowledge and skills of:

(A) Water well drillers in the construction, alteration, and repair of water wells, including proper sealing and abandonment of water wells, and the rules and regulations of this chapter;

(B) Pump installers in the planning, installation, operation, and repair of pumping equipment and water wells including sealing and abandonment, pumping efficiency, and the rules and regulations of this chapter; and

(C) Other persons who by trade install, alter, construct, or repair water wells and related equipment and who are eligible for license or certificate;

(5) Adopt, amend, or repeal, and publish rules and regulations governing examinations;

(6) Hold examinations of applicants for certificates of registration at least one (1) time a year;

(7) Grade all tests and examinations for certificates of registration;

(8) Issue licenses, permits, or certificates for the type or class of well construction or repair or pump installation; and

(9) Perform such other duties as are consistent with the purposes of this chapter.

(b) The commission may adopt and procure a seal for its official use.

History. Acts 1969, No. 641, §§ 5, 6; 2005, 21-2006; Acts 1987, No. 693, § 3; 1979, No. 80, § 1; A.S.A. 1947, §§ 21- 1989, No. 748, § 1.

17-50-205. Inspections.

(a) The Commission on Water Well Construction is authorized to inspect any water well or abandoned water well. Authorized representatives of the commission may at reasonable times enter upon, and shall be given access to, any premises for the purpose of inspection.

(b) Upon the basis of such inspections, if the commission finds that applicable laws, rules, or regulations have not been complied with or that a health hazard exists, the commission shall disapprove the well. If disapproved, no well shall thereafter be used until brought into compliance and any health hazard is eliminated.

(c) Any person aggrieved by the disapproval of a well shall be afforded the opportunity of a hearing before the commission.

History. Acts 1969, No. 641, § 7; A.S.A. 1947, § 21-2007.

17-50-206. Disposition of funds.

All fees, civil penalties, or payments of any type collected by the Commission on Water Well Construction under this chapter shall be deposited in one (1) or more banks qualifying for the deposit of public funds to be used by the commission for the proper administration of this chapter. The deposits shall be audited under the rules and regulations prescribed by the Department of Finance and Administration.

History. Acts 1969, No. 641, § 15; 1981, No. 521, § 4; A.S.A. 1947, §§ 21-2015, 21-2018.2.

17-50-207. Injunctions — Liability of members.

(a) The Commission on Water Well Construction is authorized to seek in a court of competent jurisdiction an injunction, whether permanent or temporary, upon affidavit to prevent any person, business, corporation, or other legal entity from violating any provisions of this chapter or any rule or regulation promulgated by the commission under the authority of this chapter. Such injunctions shall be issued without bond.

(b) The issuance of any injunction shall not preclude any criminal prosecution for violations of this chapter.

(c) The members of the commission, when acting in good faith, shall not be personally liable for any proceedings taken under this chapter.

History. Acts 1989, No. 748, § 1.

17-50-208. Proceedings before commission.

(a) The Commission on Water Well Construction is empowered, by majority vote, to issue subpoenas for witnesses, to require their attendance in the giving of testimony before it, and to require the production of books, papers, and records in any proceeding before the commission as may be pertinent to any questions lawfully before the commission. The subpoena shall be served by the sheriff or any other officer authorized by law to serve process in this state.

(b) In case of failure or refusal on the part of any person to comply with any subpoena issued by the commission, or in case of the refusal of any witness to testify or answer as to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county where the person is domiciled or is engaged in business or where the records are filed, on application of the commission, may issue an order to compel the person to comply with the subpoena and to attend before the commission and produce the documents and give his or her testimony upon matters, as may be lawfully required.

(c) The court shall have the power to punish for contempt as in case of disobedience of like subpoena issued by or from the court, or for a refusal to testify therein.

History. Acts 1989, No. 748, § 1.

17-50-209. Investigations.

When engaged in any investigation, any employee of the Commission on Water Well Construction shall have the power to administer oaths and to take depositions of persons relevant to any investigations for violations of this chapter.

History. Acts 1989, No. 748, § 1.

SUBCHAPTER 3 — CERTIFICATES, LICENSES, AND PERMITS

SECTION.

- 17-50-301. Certificate — Applicant qualifications.
- 17-50-302. Certificate — Reciprocity.
- 17-50-303. Certificate — Expiration and renewal.
- 17-50-304. License requirement — Exemption.
- 17-50-305. License — Application and issuance.

SECTION.

- 17-50-306. License — Display.
- 17-50-307. License — Expiration and renewal.
- 17-50-308. License — Suspension and revocation.
- 17-50-309. Bond.
- 17-50-310. Rig permits.
- 17-50-311. Fees.
- 17-50-312. Apprenticeship program.

Effective Dates. Acts 1969, No. 641, § 22; May 27, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the available supply of usable water is being depleted or polluted at a rapidly increasing rate; that it is necessary to take protective measures to conserve a potable supply of such water for future generations; that such water supply can be partially assured through reasonable controls of water well and pump installation contractors, and in order to conserve our natural supply of usable water, to protect the health of our people and to insure a more effective use of the existing water supply, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 335, § 2: Mar. 15, 1973. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that the present law relating to the renewal of water well driller certificates of registration is unduly restrictive and creates a hardship upon water well drillers in certain instances and that this inequity should be corrected immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 657, § 2: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current licenses of the water well drillers and water well contractors expire on June 30, 1975, and that notices of renewal must be mailed by June 1, 1975; that the effectiveness of this act on July 1, 1975 is essential to the operation of the agency for which the amendments in this act apply, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1975 could work irrepa-

rable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1975.”

Acts 1985, No. 783, § 3: July 1, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the rapid increase in inflation has greatly reduced the effective purchasing powers of the Committee on Water Well Construction and that immediate passage of this act is necessary to prevent irreparable harm to the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985.”

Acts 1987, No. 693, § 11: July 1, 1987. Emergency clause provided: “It is hereby

found and determined by the General Assembly that this Act should go into effect at the beginning of the next fiscal year; that the next fiscal year begins on July 1, 1987; that unless this Emergency Clause is adopted, this Act may not go into effect until after July 1, 1987. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987.”

Acts 2003, No. 297, § 16: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that water wells are currently being improperly drilled in a manner that poses an imminent threat to the water supply in this state; and that the protections included in this act must be implemented immediately to prevent injury to the public. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

17-50-301. Certificate — Applicant qualifications.

(a) Upon proper application to the Commission on Water Well Construction, any person shall be entitled to be registered and to be issued a certificate of registration as a certified water well driller or certified pump installer who shall furnish to the commission proof that he or she:

- (1) Is not less than eighteen (18) years of age;
- (2) Is of good moral character;
- (3) Has knowledge of the rules and regulations adopted under this chapter; and

(4) Has had no less than two (2) years of experience as defined by the commission’s rules in the work for which he or she is applying for a certificate of registration.

(b) The commission shall provide examinations and a course of instruction, when required, which each applicant must pass in order to qualify for the certificate of registration.

(c) Beginning July 1, 2005, any person applying to be registered as a certified water well driller or certified pump installer shall have:

- (1) Completed the apprenticeship program;
- (2) In the past ten (10) years, held a valid certificate of registration from the commission of the type and class for which the applicant is applying; or

(3) A valid certificate from another state of a type and class substantially similar to the type and class for which the person is applying for a period of years that equals the apprenticeship program requirement.

History. Acts 1969, No. 641, § 10; 1981, No. 521, § 1; A.S.A. 1947, § 21-2010; Acts 1987, No. 693, § 4; 1993, No. 328, § 1; 1993, No. 348, § 1; 1993, No. 1219, § 13; 2001, No. 1184, § 3; 2003, No. 297, § 6.

A.C.R.C. Notes. Acts 1987, No. 693, § 4, provided, in part: "Any person who was engaged in business of pump installation for a period of two (2) years immediately prior to the date of enactment hereof shall, upon application and payment of required fees within 90 days of an effective date, to be promulgated by the [now Commission on Water Well Construction], be registered or certified as provided in [this section] without fulfilling the requirement that the applicant pass any examination prescribed pursuant thereto."

Pursuant to § 1-2-207 this section is set out above as amended by Acts 1993, No. 1219, § 13 and Acts 2001, No. 1184, § 3. This section was also amended by Acts 1993, No. 328 and No. 348, § 1, which were identical, to read as follows: "(a) Upon proper application to the commission, any natural person shall be entitled to be registered and to be issued a certificate of registration as a certified water well driller or certified pump installer who shall furnish to the commission proof that he:

"(1) Is not less than eighteen (18) years of age;

"(2) Is a citizen of the United States or has declared his intention to become a citizen;

"(3) Is of good moral character;

"(4) Has knowledge of the rules and regulations adopted under this chapter; and

"(5) Has had no less than two (2) years' experience in the work for which he is applying for a certificate of registration or has completed forty (40) hours of instruction approved by the commission.

"(b) The commission shall provide examinations and a course of instruction, when required, which each applicant must pass in order to qualify for the certificate of registration."

"(c) Any person engaged in the business of pump installation shall be registered and issued a certificate of registration after passing an examination if:

"(1) the applicant has been engaged, for a period of at least two (2) years, in the business of pump installation for domestic wells and wells which produce less than fifty thousand (50,000) gallons per day; and

"(2) the applicant makes application and pays the required fees for registration within one hundred twenty (120) days after July 1, 1993."

17-50-302. Certificate — Reciprocity.

The Commission on Water Well Construction may issue a certificate of registration to any person who:

- (1) Applies for such a certificate;
- (2) Pays the proper registration and testing fees;
- (3) Passes the applicable test; and
- (4) Holds a certificate of qualification or registration issued to him or her by proper authority in any state, territory, or possession of the United States or of any other country if:

(A) The registration standard under which the certificate was issued is of a standard not lower than that specified by the provisions of this chapter and the rules of the commission promulgated pursuant to the provisions hereof; and

(B) That particular state, territory, or possession of the United States or other country extends similar privileges to the persons registered under the provisions of this chapter.

History. Acts 1969, No. 641, § 10; A.S.A. 1947, § 21-2010; Acts 2001, No. 1184, § 4; 2003, No. 297, § 7.

17-50-303. Certificate — Expiration and renewal.

(a) Certificates of registration issued pursuant to this chapter are not transferable and shall expire on July 31 of each year.

(b) A certificate of registration may be renewed without examination by making application for a certificate and paying the applicable fee.

(c) As a condition for renewal of certificates of registration, the Commission on Water Well Construction may require the person holding the certificate to complete a program of continuing education.

(d) If any person issued a certificate of registration under this chapter shall fail to make application for renewal thereof within one (1) year after the expiration of the certificate of registration, the certificate of registration of the person shall be renewed only upon application, examination, and payment of the applicable fee plus a penalty of twenty-five dollars (\$25.00).

History. Acts 1969, No. 641, § 10; A.S.A. 1947, § 21-2010; Acts 2003, No. 1973, No. 335, § 1; 1979, No. 80, § 3; 297, § 8.

17-50-304. License requirement — Exemption.

(a) Every person who wishes to engage in business as a water well contractor shall obtain from the Commission on Water Well Construction a license to conduct such a business.

(b) The license requirement shall not apply to any person who performs labor or services at the direction and under the personal supervision of a licensed water well contractor.

(c) A land owner installing pumping equipment in a water well owned by him or her for his or her own use is exempted from the licensing requirements of this chapter.

History. Acts 1969, No. 641, § 11; A.S.A. 1947, § 21-2011; Acts 1993, No. 328, § 2; 1993, No. 348, § 2.

CASE NOTES

Cited: Sanders v. Jackson, 252 Ark. 1109, 482 S.W.2d 621 (1972).

17-50-305. License — Application and issuance.

(a)(1) The Commission on Water Well Construction may adopt, and from time to time amend or repeal, rules and regulations governing applications for water well contractor licenses.

(2) The commission shall license as a water well contractor any person properly making application on a form prepared and furnished by the commission.

(b) Any person whose application for a license to engage in business as a water well contractor has been denied may request, and shall be granted, a hearing in the county where the complainant has his or her place of business before an appropriate officer of the commission.

(c) No application for a license issued pursuant to § 17-50-304 may be made within one (1) year after revocation thereof.

History. Acts 1969, No. 641, § 11; 693, § 5; 1995, No. 1296, § 66; 2003, No. A.S.A. 1947, § 21-2011; Acts 1987, No. 297, § 9.

CASE NOTES

Cited: Sanders v. Jackson, 252 Ark. 1109, 482 S.W.2d 621 (1972).

17-50-306. License — Display.

The licensee shall conspicuously display his or her license at his or her principal place of business.

History. Acts 1969, No. 641, § 11; A.S.A. 1947, § 21-2011.

CASE NOTES

Cited: Sanders v. Jackson, 252 Ark. 1109, 482 S.W.2d 621 (1972).

17-50-307. License — Expiration and renewal.

(a) Licenses issued pursuant to this subchapter are not transferable and shall expire on July 31 of each year.

(b) As a condition for license renewal the Commission on Water Well Construction may require the licensee or its agent to complete a program of continuing education.

(c)(1)(A) The contractor shall renew the license annually by applying no later than thirty (30) days after the expiration date and paying the applicable fee.

(B) When the contractor submits the renewal materials and fee, the commission shall extend the validity of the current license until the contractor receives the new license or the applicant is notified by the commission that it has refused to renew the license.

(2) After August 31 of each year, a license will be renewed only upon application and payment of the applicable fee plus a penalty of fifty dollars (\$50.00).

History. Acts 1969, No. 641, § 11;
1979, No. 80, § 4; A.S.A. 1947, § 21-2011;
Acts 2003, No. 297, § 10.

CASE NOTES

Cited: Sanders v. Jackson, 252 Ark.
1109, 482 S.W.2d 621 (1972).

17-50-308. License — Suspension and revocation.

(a) Whenever the Commission on Water Well Construction, after notice and hearing, determines that the holder of a license issued pursuant to this subchapter has violated any provision of this chapter or any rule or regulation adopted pursuant to it, the commission is authorized to suspend or revoke the license.

(b) The commission shall serve any order issued pursuant to this section upon the licensee by:

- (1) Certified mail with return receipt requested; or
- (2) Personal service.

(c) Any such order shall become effective upon return of receipt to the commission.

(d) Any person aggrieved by any order issued after the hearing may appeal within thirty (30) days to the circuit court of the county where that person resides or to the Pulaski County Circuit Court.

History. Acts 1969, No. 641, § 11;
A.S.A. 1947, § 21-2011; Acts 2003, No.
297, § 11.

CASE NOTES

Cited: Sanders v. Jackson, 252 Ark.
1109, 482 S.W.2d 621 (1972).

17-50-309. Bond.

(a) All water well contractors shall abide by the licensing laws of Arkansas and shall post a water well contractor's bond.

(b) The Commission on Water Well Construction shall establish and promulgate rules establishing the amount of water well contractor's bonds based on a contractor's past performance or violations of the rules and regulations of this chapter, construction methods, type or class of construction, and business practices.

(c) In no instance shall this bond be less than ten thousand dollars (\$10,000) unless exempted by other provisions of this chapter.

History. Acts 1969, No. 641, § 11; 1981, No. 521, § 2; A.S.A. 1947, § 21-

2011; Acts 1987, No. 693, § 6; 2003, No. 297, § 12.

CASE NOTES

Cited: Sanders v. Jackson, 252 Ark. 1109, 482 S.W.2d 621 (1972).

17-50-310. Rig permits.

(a)(1) The Commission on Water Well Construction shall issue rig permits if the contractor has:

- (A) A valid license;
- (B) Made proper application for a rig permit; and
- (C) Paid the required fee.

(2) Rig permits shall not be transferable and shall expire July 31 of each year.

(b)(1)(A) The contractor must renew the rig permit annually by applying no later than thirty (30) days after the expiration date and paying the required fee.

(B) After receiving the renewal materials and fee, the commission shall extend the validity of the current rig permit until the contractor receives:

- (i) The new rig permit; or
- (ii) Notice that the commission has refused to renew the rig permit.

(2) After August 31 of each year, the commission shall only renew a rig permit upon application and payment of the applicable fee plus a penalty of twenty-five dollars (\$25.00).

(c)(1) No water well contractor shall operate a rig or permit an employee to operate a rig unless the contractor holds a valid rig permit issued by the commission.

(2) The contractor shall obtain a separate permit for each rig operated by the contractor during the permit year.

(d)(1) The commission shall issue permits composed of weatherproof material.

(2) The contractor shall firmly and conspicuously attach the permit to the rig for which it was issued.

History. Acts 1969, No. 641, § 9; 1979, No. 80, § 2; A.S.A. 1947, § 21-2009; Acts 2003, No. 297, § 13.

17-50-311. Fees.

(a) The Commission on Water Well Construction shall establish and collect fees not to exceed the maximum amounts as follows:

- (1) Contractor's license — well drilling \$200.00
- (2) Contractor's license — pump installer 200.00
- (3) Contractor's license - well drilling and pump installer ... 400.00
- (4) Rig permit fee 160.00

- (5) Registration fee — well driller 150.00
- (6) Registration fee — pump installer150.00
- (7) Registration fee — apprentice150.00
- (b) The commission shall not reduce fees for any license or rig permit even though it may be valid for less than a full license or permit year.
- (c) The commission is authorized to establish and receive fees for the cost incurred in rendering services and material, provided the fees reflect the reasonable cost to the commission. The commission shall establish the fees as set forth in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (d) The commission shall have the authority to set fees not to exceed the maximums set in subsection (a) of this section.

History. Acts 1969, No. 641, § 14; 1975, No. 657, § 1; 1985, No. 783, § 1; A.S.A. 1947, § 21-2014; Acts 2003, No. 297, § 14; 2007, No. 434, § 1; 2009, No. 371, § 1.

A.C.R.C. Notes. The amendment to § 17-50-311(a) by Acts 2007, No. 434, § 1 omitted the following phrase in subdivision (a)(2): “and annual renewal”. Because the phrase was omitted from subdivision (a)(2) without being stricken through on the act, it is not clear whether the omission of the phrase by the General Assembly was intentional.

Amendments. The 2007 amendment substituted “\$100.00” for “\$70.00” in (a)(1); substituted “280.00” for “200.00” in (a)(2); added (a)(3) and redesignated former (a)(3) as present (a)(4); and substituted “115.00” for “80.00” in (a)(4).

The 2009 amendment rewrote the fees in (a).

17-50-312. Apprenticeship program.

- (a) The Commission on Water Well Construction shall develop an apprenticeship program to assist persons applying for registration and having a minimum level of knowledge, skills, and abilities for the type or class of registration for which they are applying.
- (b)(1) The program shall include the following:

(A) Registration and issuance of a certificate of apprenticeship for the type or class of registration for which the apprentice will be applying; and

(B) Supervision of the apprentice by a person holding a valid certificate or certificates of registration of the type or class for which the apprentice will be applying.
- (2) The supervising certificate holder shall report to the commission at the time of certificate of apprenticeship registration renewal that the apprentice is successfully obtaining the necessary knowledge, skills, and abilities for the type or class of certificate for which the apprentice will be applying.
- (3) The apprenticeship program requirement shall not exceed four (4) years.

History. Acts 2003, No. 297, § 15.

SUBCHAPTER 4 — ARKANSAS WATER WELL RIG CONFISCATION ACT

SECTION.

- 17-50-401. Title.
17-50-402. Legislative findings.
17-50-403. Definitions.
17-50-404. Property subject to forfeiture.
17-50-405. Petition — Order to show cause — Notice.

SECTION.

- 17-50-406. Sale of forfeited property.
17-50-407. Application of proceeds from sale.

Effective Dates. Acts 2003, No. 855, § 2: Mar. 28, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that improper water well construction is injurious to the public peace, health, and safety; that the state must, without undue delay, implement new enforcement procedures; and that this act accomplishes that purpose. Therefore, an emergency is declared to exist and this act

being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

17-50-401. Title.

This subchapter may be known and cited as the "Arkansas Water Well Rig Confiscation Act".

History. Acts 2003, No. 855, § 1.

17-50-402. Legislative findings.

It has been found by the General Assembly that:

(1) Certain persons continuously violate Arkansas law requiring that they first obtain the proper registration, licensure, and training for construction of water wells and that such persons do not have the required bond to protect well owners;

(2) Construction of water wells by those persons is a threat to the general health, safety, and welfare because the Commission on Water Well Construction does not have knowledge of their actions and has no means of holding them accountable for failure to develop water in an orderly, sanitary, reasonable, and safe manner; and

(3) Because those persons pose a great threat to the people of Arkansas, the commission must have the ability to obtain the forfeiture of the property of violators.

History. Acts 2003, No. 855, § 1.

17-50-403. Definitions.

As used in this subchapter:

(1) "Commission" means the Commission on Water Well Construction, which was created for administration and enforcement of the Arkansas Water Well Construction Act, § 17-50-101 et seq.;

(2) "Contraband property" means property of any nature, including personal, tangible, or intangible, but not real property, that is used or intended to be used in violation of § 17-50-104;

(3)(A) "Pumping equipment" means all machinery and parts of pumps such as deep well turbine pumps with right angle gear drive, vertical hollow shaft motors, jet pumps and motors, submersible pumps and motors, and other parts and fittings installed or attached to the well.

(B) "Pumping equipment" does not include cooling units, horizontal electric motors, heat pump circulating pipe, and stationary diesel or gas engines;

(4) "Rig" means any power-driven, percussion, rotary, digging, jetting, direct push, vibrating, hydrofracturing, or augering machine used in the construction, alteration, or abandonment of water wells, or any hoist or machine used in installing or removing pumps from wells with the lifting capacity of one thousand pounds (1,000 lbs.) or more; and

(5)(A) "Water well" means any excavation that is drilled, redrilled, cored, bored, washed, driven, dug, jetted, or otherwise artificially constructed for the purpose of locating, acquiring, diverting, or artificially recharging ground water.

(B)(i) "Water well" includes excavations made for the purpose of exchanging the geothermal energy found in the earth as heat pump wells as defined in § 17-50-103.

(ii) "Water well" does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying, or for inserting media to repressure oil or natural gas-bearing formations, or for storing petroleum, natural gas, or other products.

History. Acts 2003, No. 855, § 1.

17-50-404. Property subject to forfeiture.

The following are subject to forfeiture upon the initiation of a civil proceeding filed by the prosecuting attorney and when so ordered by the circuit court in accordance with this subchapter:

(1) Contraband property used or intended to be used in violation of § 17-50-104;

(2) The proceeds gained from a violation of § 17-50-104;

(3) Personal property acquired with proceeds gained from a violation of § 17-50-104;

(4)(A) All conveyances, including vehicles and rigs, that are used or intended for use to facilitate a violation of § 17-50-104.

(B) No conveyance used as a common carrier by any person in business as a common carrier is subject to forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter.

(C) No conveyance is subject to forfeiture under this subchapter by reason of any act or omission established by the owners to have been committed or omitted without the owners' knowledge or consent.

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party or parties;

(5) All materials including pumping equipment, casing, piping, motors, and other equipment used or intended for use in violation of § 17-50-104;

(6)(A) Everything of value furnished or intended to be furnished in exchange for a violation of § 17-50-104 or all profits, proceeds, or property, excluding real property, traceable to such an exchange.

(B) It may be presumed that the property described in subdivision (6)(A) of this section was acquired with proceeds gained from a violation of § 17-50-104 and is subject to forfeiture; and

(7) Property used in a violation of § 17-50-104 that has title of ownership with two (2) parties on the title or a cosigner if one (1) party on the title uses the property in violation of § 17-50-104 or receives titled property as the proceeds of the violation even if the second party claims that he or she did not have knowledge or involvement in the violation.

History. Acts 2003, No. 855, § 1.

17-50-405. Petition — Order to show cause — Notice.

(a)(1) The prosecuting attorney of the judicial district within whose jurisdiction the property sought to be forfeited is seized shall promptly proceed against the property by filing in the circuit court having jurisdiction of the property a petition for an order to show cause why the court should not order forfeiture of the property.

(2) The petition shall set forth:

(A) A statement that the action is brought pursuant to § 17-50-404;

(B) The law enforcement agency bringing the action;

(C) A description of the property sought to be forfeited;

(D) A statement that on or about a date certain the property was used or intended to be used in a criminal act constituting violation of § 17-50-104 or that the property was purchased or otherwise obtained as a result of commission of the violation;

(E) A statement detailing the facts in support of forfeiture; and

(F) A list of all persons known to the law enforcement agency, after diligent search and inquiry, who may claim an ownership interest in the property by title or registration or by virtue of a lien allegedly perfected in the manner prescribed by law.

(b)(1) Upon receipt of a petition complying with the requirements of subsection (a) of this section, the circuit judge of the court having jurisdiction shall issue an order to show cause setting forth a statement that this subchapter is the controlling law.

(2) In addition, the order shall set a date at least forty-one (41) days after the date of first publication of the order pursuant to subsection (c) of this section for all persons claiming an interest in the property to file the pleadings as they desire as to why the court should not order the forfeiture of the property to the law enforcement agency seeking forfeiture of the property.

(3) The court shall further order that all persons who do not appear on that date are deemed to have defaulted and waived any claim to the subject property.

(c)(1) The prosecuting attorney shall give notice of the forfeiture proceedings by:

(A) Causing to be published a copy of the order to show cause two (2) times each week for two (2) consecutive weeks in a newspaper having general circulation in the county where the property is located, with the last publication being not less than five (5) days before the show cause hearing; and

(B) Sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of or a security interest in the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:

(i) The property is of a type for which title or registration is required by law;

(ii) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(iii) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

(2) The law enforcement agency shall be obligated only to make diligent search and inquiry as to the owner of the property and if after diligent search and inquiry the agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interests in the property shall not be applicable.

(d) At the hearing on the matter, the petitioner shall establish by a preponderance of the evidence that the property is subject to forfeiture as provided in § 17-50-404.

(e) The final order of forfeiture by the circuit court shall perfect in the law enforcement agency all rights, title, and interest in and to the property and shall relate back to the date of the seizure.

(f) Physical seizure of property shall not be necessary in order to allege in a petition under this section that property is forfeitable.

(g) Upon filing the petition, the prosecuting attorney for the judicial district may also seek such protective orders as necessary to prevent the transfer, encumbrance, or other disposal of any property named in the petition.

History. Acts 2003, No. 855, § 1.

17-50-406. Sale of forfeited property.

If a law enforcement agency desires to sell property forfeited to it under § 17-50-404, the law enforcement agency shall:

(1) Publish at least two (2) times a week for two (2) consecutive weeks in a newspaper having general circulation in the county notice of the sale, including the time, place, conditions of the sale, and a description of the property to be sold;

(2) Send a copy of the notice of the sale to each person having ownership of or a security interest in the property by certified mail, return receipt requested, or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:

(A) The property is of a type for which title or registration is required by law;

(B) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(C) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.; and

(3) Dispose of the property at public auction to the highest bidder for cash without appraisal.

History. Acts 2003, No. 855, § 1.

17-50-407. Application of proceeds from sale.

(a) The proceeds of any sale under § 17-50-406 shall be applied as follows:

(1) To payment of the balance due on any lien preserved by the court in the forfeiture proceedings;

(2) To payment of the costs incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of the property;

(3) To payment of the costs incurred by the court;

(4) To payment of the costs incurred by the prosecuting attorney or attorney for the law enforcement agency to which the property is forfeited or to the Commission on Water Well Construction in investigating and developing the case; and

(5) The remaining proceeds shall be equally divided between the commission to be used in furtherance of the commission's activities and the law enforcement agency to which the property is forfeited.

(b) If more than one (1) law enforcement agency is substantially involved in effecting a forfeiture under § 17-50-404, the circuit court having jurisdiction over the forfeiture proceeding shall equitably distribute the law enforcement agency portion of the property among the law enforcement agencies.

History. Acts 2003, No. 855, § 1.

CHAPTER 51
WATERWORKS OPERATORS

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 2. LICENSING.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-44-101 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

- SECTION.
- 17-51-101. Definitions.
 - 17-51-102. Penalties.
 - 17-51-103. Powers and duties of the board.
 - 17-51-104. Drinking Water Advisory and Operator Licensing Com-

- SECTION.
- mittee — Creation — Members.
 - 17-51-105. Drinking Water Advisory and Operator Licensing Committee — Duties.
 - 17-51-106. Fees.

Effective Dates. Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Gov-

ernor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-51-101. Definitions.

As used in this chapter:

- (1) "Board" means the State Board of Health;
- (2) "Committee" means the Drinking Water Advisory and Operator Licensing Committee;
- (3) "Community public water system" means any public water system which serves at least fifteen (15) connections or twenty-five (25) persons who are year-round residents;
- (4) "Department" means the Department of Health;
- (5) "Drinking Water Operator Certification Program" means those activities conducted by the Department of Health and the Drinking Water Advisory and Operator Licensing Committee related to the training, examination, and licensing and certification of public water system operators;
- (6) "Late renewal" means an application for renewal when the application for renewal or the associated fee is received more than thirty (30) days following the beginning of a renewal period;
- (7) "Noncommunity public water system" means a public water system that serves fifteen (15) service connections or twenty-five (25) persons, at least sixty (60) days per year, that is not a community public water system;
- (8) "Nontransient noncommunity public water system" means a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year;
- (9) "Public water system" means all sources and their surroundings from which water is derived for drinking or domestic purposes by the public, and all structures, conduits, and appurtenances in connection therewith by which water for such use is obtained, treated, conditioned, stored, and delivered to consumers;
- (10) "Treatment" means the application of physical processes or the addition of chemicals, or both, to water which a public water system provides to the public for the purpose of improving the quality of the water, except that the addition of gaseous chlorine, sodium hypochlorite, or calcium hypochlorite alone shall not be defined as treatment; and
- (11) "Water system operator" means any person who, during the performance of his or her regular duties at a community public water system, a nontransient noncommunity public water system, or any other noncommunity public water system which utilizes a surface water or surface water-influenced source, exercises individual judgment by which, either directly or indirectly, the safety, quality, and quantity of water delivered from the water system might be affected.

History. Acts 1957, No. 333, § 2; A.S.A. 1947, § 71-1702; Acts 1991, No. 1001, § 1; 1997, No. 494, § 1.

17-51-102. Penalties.

(a)(1) Any person or persons representing a firm, corporation, municipality, or other political authority who violate any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than thirty (30) days, or by both fine and imprisonment.

(2) Each day during which a violation continues shall be a separate offense.

(b)(1) Every firm, person, or corporation who violates this chapter or any of the rules or regulations issued or promulgated by the State Board of Health, or who violates any condition of a license, permit, certificate, or any other type of registration issued by the board, may be assessed a civil penalty by the board.

(2) The penalty shall not exceed one thousand dollars (\$1,000) for each violation.

(3) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

(c) All fines collected under this section shall be deposited in the State Treasury and credited to the Waterworks Operators Licensing Fund to be used to defray the costs of administering this chapter.

(d) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer of the Department of Health is authorized to transfer all unexpended funds relative to fines collected under this section, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1957, No. 333, § 13; A.S.A. 1947, § 71-1713; Acts 1991, No. 1001, § 1; 1995, No. 787, § 1.

17-51-103. Powers and duties of the board.

(a) The State Board of Health shall have the authority to:

(1) Adopt rules and regulations in accordance with this chapter as may be necessary for the administration and enforcement of this chapter;

(2) Set fees to cover the cost of the administration of this chapter;

(3) Revoke a water system operator's license for cause; and

(4) Establish minimum educational standards for all applicants for licensure.

(b) All rules and regulations promulgated pursuant to this chapter shall be reviewed by the House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

History. Acts 1957, No. 333, §§ 3, 4; A.S.A. 1947, §§ 71-1703, 71-1704; Acts

1991, No. 1001, §§ 1, 2; 1997, No. 179, § 12. is deemed to be superseded by the current subsection enacted in 1991.

A.C.R.C. Notes. Former subsection (b)

17-51-104. Drinking Water Advisory and Operator Licensing Committee — Creation — Members.

(a)(1) There is created the Drinking Water Advisory and Operator Licensing Committee to consist of seven (7) members to be appointed by the board.

(2) One (1) shall be a member of the staff of the Engineering Section of the Department of Health who shall be a registered engineer and who shall act as executive secretary for the board for water system operator licensing activities, and also act as executive secretary for the committee;

(3) One (1) shall be an engineer on the teaching staff of any state-supported institution of higher education who shall be either a sanitary engineer, civil engineer, environmental engineer, or chemical engineer with expertise in the drinking water field;

(4) Four (4) members shall be active water system operators who shall hold the highest grade licenses;

(5) One (1) member shall be a consulting engineer specializing in drinking water systems design.

(b) Each regular appointment shall be for a term of six (6) years, provided that no person shall be appointed to serve more than one (1) full six-year term.

(c) In the event of a vacancy, a new member shall be appointed by the board to serve out the unexpired term.

(d) A member of the committee may be removed for cause only after the board has made an investigation at which the accused has had an opportunity to defend himself or herself against any and all charges.

(e) The committee shall serve without remuneration but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) All members of the committee shall be residents of the State of Arkansas.

(g) The member of the committee who is a member of the staff of the Engineering Section of the department shall serve at the pleasure of the Director of the Department of Health.

History. Acts 1957, No. 333, § 9; A.S.A. 1947, § 71-1709; Acts 1991, No. 1001, § 1; 1997, No. 250, § 153; 1997, No. 494, § 2.

A.C.R.C. Notes. The terms of the members of the licensing committee are arranged so that one term expires every year.

Acts 1991, No. 1001, § 1, provided in part, that initial members should be appointed as follows: one member for one

year; one member for two years; one member for three years; one member for four years; one member for five years; and one member for six years. It further provided that all members of the Water Operator Licensing Committee as of July 15, 1991, shall be automatically appointed to terms on the committee which correspond to their remaining terms on the Water Operator Licensing Committee.

17-51-105. Drinking Water Advisory and Operator Licensing Committee — Duties.

The duties of the Drinking Water Advisory and Operator Licensing Committee shall be as follows:

- (1) To assist the Department of Health in examining applicants for water system operator licenses;
- (2) To advise the department as to the fitness of the applicant for licensing and certification;
- (3) To advise the State Board of Health in cases of suspension or revocation of license;
- (4) To advise the board and department in all matters, upon request by the board or department, or upon its own motion, relating to the operations of, and the development of regulations for, the public water system supervision program operated by the Engineering Section of the Department of Health; and
- (5) To advise the board or department in all matters, upon request by the board or department, relating to training programs for water system operators.

History. Acts 1957, No. 333, § 10;
A.S.A. 1947, § 71-1710; Acts 1991, No.
1001, § 1.

17-51-106. Fees.

- (a) The State Board of Health shall have the authority to:
 - (1) Set fees to cover only the cost of the administration of this chapter; and
 - (2) Establish fees for:
 - (A) Examination;
 - (B) Licensing;
 - (C) Renewal of license;
 - (D) Penalty for late renewal;
 - (E) Evaluation for reciprocity; and
 - (F) Temporary permit issuance or renewal.
 - (b) Fees shall not exceed:
 - (1) Fifty dollars (\$50.00) for examination;
 - (2) Twenty-five dollars (\$25.00) for licensing;
 - (3) Fifty dollars (\$50.00) for renewal of licenses;
 - (4) Ten dollars (\$10.00) for penalty for late renewal;
 - (5) Fifty dollars (\$50.00) for evaluation for reciprocity; and
 - (6) Twenty-five dollars (\$25.00) for temporary permits or renewal of temporary permits.
 - (c)(1) All fees collected under this chapter are declared special revenues and shall be deposited in the State Treasury to the credit of the Public Health Fund, and such moneys shall be expended only for the administration of this chapter.
 - (2) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the

Department of Health is authorized to transfer all unexpended funds relative to the Drinking Water Operator Certification Program that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose in any following fiscal year.

History. Acts 1957, No. 333, §§ 4, 5; A.S.A. 1947, §§ 71-1704, 71-1705; Acts 1991, No. 1001, § 1; 1997, No. 494, § 3.

SUBCHAPTER 2 — LICENSING

SECTION.

17-51-201. License required.

17-51-202. Classifications — Examinations.

17-51-203. Issuance — Temporary permits.

SECTION.

17-51-204. Renewal — Standing.

17-51-205. Suspension — Revocation — Reinstatement.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

17-51-201. License required.

(a) In order to safeguard the public health, all operators of community and certain noncommunity public water systems from which water is sold, distributed, or otherwise offered for human consumption, whether such water systems are publicly or privately owned and operated, shall be licensed and certified as competent by the Department of Health under the provisions of this chapter and under such rules and regulations as the State Board of Health may adopt under the provisions of this chapter.

(b) It shall be unlawful for any person, municipality, political subdivision, corporation, partnership, sole proprietorship, or any authority that furnishes water for domestic consumption to operate any type of community public water system, nontransient noncommunity public water system, or any other noncommunity public water system utilizing a surface water or surface water-influenced source, unless the operator in charge is duly licensed and certified competent by the department.

(c) It shall be unlawful for any person to perform the duties of an operator without being duly licensed or to falsely represent himself or herself as a licensed operator.

(d) It shall also be unlawful for any public or private official, not duly licensed, to attempt to influence the judgment of a licensed operator in

matters where the public health may be involved unless this official is an authorized representative of the department.

History. Acts 1957, No. 333, §§ 1, 12; A.S.A. 1947, §§ 71-1701, 71-1712; Acts 1991, No. 1001, § 1; 1997, No. 494, § 4.

17-51-202. Classifications — Examinations.

(a) Water system operators shall be licensed in appropriate grades according to responsibilities and in accordance with classifications designated by the State Board of Health which consider both the population served and the level of treatment required to produce an acceptable quality of water.

(b) Applicants for examination for licensing shall be examined in the various phases of water system operation as designated by the board.

(c) At its discretion, the Drinking Water Advisory and Operator Licensing Committee may delete or modify any of the adopted requirements where they are not applicable, but the licenses granted shall be limited and valid only under the conditions described.

(d) The committee at its discretion may waive the requirements or any part of the requirements for formal examination of an applicant for a license if the applicant holds a valid license or certificate from another state in which the requirements for license in the appropriate grade are at least equal to the requirements set forth by the board.

(e) The Department of Health shall conduct examinations to establish the qualifications of applicants for licensure. The department shall conduct regular examination sessions, at least annually, and may conduct additional examination sessions whenever it deems necessary.

History. Acts 1957, No. 333, § 7; A.S.A. 1947, § 71-1707; Acts 1991, No. 1001, § 1.

17-51-203. Issuance — Temporary permits.

(a) The Department of Health shall license and certify all applicants for licenses under this chapter who satisfy the requirements of the chapter. Licenses shall be granted according to classifications set forth by the State Board of Health.

(b) In an emergency, the department at its discretion may grant temporary permits for operation of a water system when and only when the public health and safety are not jeopardized. The temporary permit shall be valid for a period of not more than one (1) calendar year and may be renewed only one (1) time, with the approval of the department.

History. Acts 1957, No. 333, § 6; A.S.A. 1947, § 71-1706; Acts 1991, No. 1001, § 1; 1997, No. 494, § 5.

17-51-204. Renewal — Standing.

(a) Licenses shall be valid for a period of two (2) years and shall be renewable by the Department of Health upon application without examination, provided that the applicant is in good standing.

(b) The licensee, in order to remain in good standing, shall demonstrate his or her interest in the technical developments of water system operation by fulfilling requirements as the State Board of Health may direct.

History. Acts 1957, No. 333, §§ 6, 8; A.S.A. 1947, §§ 71-1706, 71-1708; Acts 1991, No. 1001, § 1.

17-51-205. Suspension — Revocation — Reinstatement.

(a) The Department of Health shall suspend the license of an operator for cause.

(b) The suspension shall remain in effect until the case can be reviewed by the Drinking Water Advisory and Operator Licensing Committee, where the licensee shall have the opportunity to present his or her defense.

(c) After the committee has reported its findings to the State Board of Health, the board shall uphold the department's suspension of the license, reinstate the licensee, or revoke the license.

(d) A license so revoked may be reinstated only if all the conditions that caused revocation have been removed.

History. Acts 1957, No. 333, § 11; A.S.A. 1947, § 71-1711; Acts 1991, No. 1001, § 1; 1997, No. 494, § 6.

RESEARCH REFERENCES

Ark. L. Rev. Administrative License Revocation in Arkansas, 14 Ark. L. Rev. 139.

CHAPTER 52
HOME INSPECTORS**SUBCHAPTER.**

1. GENERAL PROVISIONS. [REPEALED.]
2. REGISTRATION. [REPEALED.]
3. ARKANSAS HOME INSPECTORS REGISTRATION ACT.

A.C.R.C. Notes. Acts 1997, No. 791, § 12, provided: "Persons affected by this act shall have ninety (90) calendar days after it becomes law to comply with its provisions."

Acts 2003, No. 1328, § 4, provided: "Certificates of registration issued to home inspectors under § 17-52-103, shall remain in effect until his or her registration expires."

Acts 2003, No. 1328, § 5, provided: "All regulations adopted by the Homes Inspector Advisory Board under § 17-52-107 shall remain in effect until the new Arkansas Inspector Registration Board adopts regulations, unless the regulations conflict with this act."

Acts 2003, No. 1328, § 6, provided: "Members of the Home Inspector Advisory Board appointed under § 17-52-107 shall serve on the Arkansas Inspector Registration Board created under this act until the Governor has appointed new board members."

Effective Dates. Acts 1997, No. 791, § 16: Mar. 25, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the

lack of a present Home Inspector registration law allows for poorly accomplished home inspections; and that the lack of a law does not allow for consumer or public protection to the citizens of the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-52-101 — 17-52-107. [Repealed.]

Effective Dates. Acts 2003, No. 1328, § 7: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that proper registration and monitoring of the home inspectors in this state is vital to the protection of Arkansas home owners; that the current home inspector laws are not adequate and do not properly fund this important government function;

and that this act is essential that a functioning Home Inspector Registration Board be in place at the beginning of the fiscal year to receive its funds to properly monitor Arkansas home inspectors. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

17-52-101 — 17-52-107. [Repealed.]

Publisher's Notes. This subchapter, concerning home inspectors generally, was repealed by Acts 2003, No. 1328, § 2. The subchapter was derived from the following sources:

- § 17-52-101. Acts 1997, No. 791, § 1.
- § 17-52-102. Acts 1997, No. 791, § 2.

- § 17-52-103. Acts 1997, No. 791, § 3; 1999, No. 1312, § 1.
- § 17-52-104. Acts 1997, No. 791, § 4; 1999, No. 1312, § 2.
- § 17-52-105. Acts 1997, No. 791, § 5.
- § 17-52-106. Acts 1997, No. 791, § 8.
- § 17-52-107. Act 1999, No. 1312, § 3.

SUBCHAPTER 2 — REGISTRATION

SECTION.

17-52-201 — 17-52-204. [Repealed.]

17-52-201 — 17-52-204. [Repealed.]

Publisher's Notes. This subchapter, concerning registration of home inspectors, was repealed by Acts 2003, No. 1328, § 2. The subchapter was derived from the following sources:

§ 17-52-201. Acts 1997, No. 791, § 7.
 § 17-52-202. Acts 1997, No. 791, § 9.
 § 17-52-203. Acts 1997, No. 791, § 10.
 § 17-52-204. Acts 1997, No. 791, § 11.

SUBCHAPTER 3 — ARKANSAS HOME INSPECTORS REGISTRATION ACT

SECTION.

17-52-301. Title.
 17-52-302. Purpose and intent.
 17-52-303. Definitions.
 17-52-304. Creation — Members.
 17-52-305. Meetings.
 17-52-306. Powers and duties of the board.
 17-52-307. Hearings — Review — Access to records.
 17-52-308. Complaints and disciplinary procedures.
 17-52-309. Violation of law — Civil penalties, injunctions, and venue.

SECTION.

17-52-310. Continuing education.
 17-52-311. Role of Secretary of State.
 17-52-312. Fund.
 17-52-313. Disposition of funds.
 17-52-314. Registration.
 17-52-315. Application for registration.
 17-52-316. Fees and reimbursements.
 17-52-317. Certificates of registration.
 17-52-318. Insurance.
 17-52-319. Standards of care.
 17-52-320. Limitations.
 17-52-321. Unfair practices.
 17-52-322. Exemptions.

Effective Dates. Acts 2003, No. 1328, § 7: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that proper registration and monitoring of the home inspectors in this state is vital to the protection of Arkansas home owners; that the current home inspector laws are not adequate and do not properly fund this important government function; and that this act is essential that a functioning Home Inspector Registration Board be in place at the beginning of the fiscal year to receive its funds to properly monitor Arkansas home inspectors. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2005, No. 2014, § 5: July 1, 2005. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2005 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2005 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2005."

17-52-301. Title.

This subchapter shall be known and may be cited as the “Arkansas Home Inspectors Registration Act”.

History. Acts 2003, No. 1328, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of businesses, Home Inspectors Registration Act, Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Business 26 U. Ark. Little Rock L. Rev. 452.

17-52-302. Purpose and intent.

(a) It is the intent of the General Assembly in enacting this subchapter:

- (1) To assure that consumers of home inspection services can rely upon the competence of home inspectors as determined by educational and testing requirements;
- (2) That in ascertaining the degree of care that would be exercised by a reasonably prudent home inspector, the court shall consider the standards of practice and code of ethics that are in force at the time the inspection in question was conducted; and
- (3) That this subchapter apply to and govern all persons who practice home inspection in Arkansas whether they are registered under its provisions or not.

(b) The purpose of the Arkansas Home Inspector Registration Board created under this subchapter shall be to:

- (1) Administer and enforce the provisions of this subchapter;
- (2) Promote a business atmosphere that will protect consumers of home inspection services;
- (3) Oversee an ongoing program to develop high-level skills in home inspectors; and
- (4) Encourage the presence of a viable home inspection industry in Arkansas.

History. Acts 2003, No. 1328, § 1.

17-52-303. Definitions.

As used in this subchapter:

- (1) “Applicant” means a person who is applying for registration or renewal of registration under this subchapter;
- (2) “Board” means the Arkansas Home Inspector Registration Board as established in this subchapter;
- (3) “Client” means a person who engages the services of a home inspector for the purpose of obtaining inspection of and a written report on the condition of a residential unit;

(4) “Competency examination” means a written examination to establish whether an applicant possesses an adequate level of knowledge of home inspection procedures and components;

(5) “Home inspection” means a visual inspection of a residential unit and its attached carports and garages and the operation of the building’s systems by using the controls normally operated by the owner;

(6) “Home inspection report” means a written report prepared for a fee and issued by a home inspector to document the results of a home inspection;

(7) “Home inspector” means a person who engages in the business of performing home inspections for compensation and who in the pursuit of that business offers to inspect or inspects the condition of a private residence;

(8) “Person” means any natural person; and

(9) “Residential unit” means any dwelling from one (1) to four (4) units in design intended principally for residential purposes by one (1) or more persons.

History. Acts 2003, No. 1328, § 1.

17-52-304. Creation — Members.

(a) There is created the Arkansas Home Inspector Registration Board.

(b) The board shall consist of seven (7) members, to be appointed by the Governor as follows:

(1) Four (4) members shall be registered home inspectors;

(2) One (1) member shall be a licensed real estate professional;

(3) One (1) member shall be a licensed real estate appraiser; and

(4) One (1) member shall be an at-large member who shall serve as a consumer advocate.

(c)(1) The initial members appointed under subsection (b) of this section shall determine their terms of office by drawing lots to result in two (2) home inspector members and two (2) noninspector members serving two-year terms and two (2) home inspector members and one (1) noninspector member serving one-year terms.

(2) Successor appointed members shall serve two-year terms.

(d) Any vacancy that occurs on the board shall be filled by the Governor for the remainder of the unexpired term.

(e) Board members shall serve not more than three (3) consecutive terms of office.

(f) The consumer advocate member of the board shall call the first meeting and shall serve as chair of the first meeting.

(g) If funds are available, members of the board may receive expense reimbursement according to § 25-16-902.

History. Acts 2003, No. 1328, § 1.

A.C.R.C. Notes. Acts 2003, No. 1328, § 6, provided: “Members of the Home In-

spector Advisory Board appointed under § 17-52-107 shall serve on the Arkansas Inspector Registration Board created un-

der this act until the Governor has appointed new board members.”

17-52-305. Meetings.

(a) The Arkansas Home Inspector Registration Board shall physically meet not fewer than two (2) times each calendar year to conduct the business of the board.

(b) The board may conduct any additional meetings in person, by telephone conference call, or by other electronic means.

(c) Dates, times, and places of meetings shall be decided by a majority vote of the board members.

(d)(1) At the first meeting, a chair and all other officers needed to conduct the business of the board shall be elected.

(2) Except for the election of the initial board officers, all officers shall be elected in May of each year and shall serve for twelve-month terms.

(e) Written notice shall be given to each member of the board of the time and place of each meeting at least ten (10) calendar days before the scheduled date of the meeting.

(f) The minutes of all meetings shall be recorded by an administrative secretary and made a permanent part of the records of the board no later than seven (7) calendar days after the respective meeting.

(g) A majority of the members of the board shall constitute a quorum for transacting any business of the board.

History. Acts 2003, No. 1328, § 1.

17-52-306. Powers and duties of the board.

The Arkansas Home Inspector Registration Board may:

(1) Perform the duties and functions appropriate and necessary to carry out the provisions of this subchapter;

(2) Review, approve, or reject registration applications and issue registration certificates to applicants;

(3) Establish a mandatory continuing education program designed to upgrade the professional skills and knowledge of home inspectors practicing in Arkansas;

(4)(A) Establish administrative procedures for disciplinary proceedings conducted according to the provisions for this subchapter.

(B) The procedures shall include provisions for the suspension and revocation of registration and enforcement of civil penalties;

(5) Establish procedures for processing and resolving complaints against home inspectors conducting inspections in Arkansas;

(6) Authorize disbursement of the funds collected into the Arkansas Home Inspectors Registration Fund;

(7) Employ legal counsel to represent it in any proceedings when legal counsel is required;

(8) Develop competency exams for home inspectors;

(9) Establish a standard of practice and code of ethics for home inspectors;

(10) Enter into agreements with other states, territories, districts, or possessions of the United States concerning registration or licensing requirements acceptable between Arkansas and the other entities;

(11) Maintain working files as it deems necessary;

(12) Contract for administrative support services and meet financial obligations of those contracts using moneys from the Arkansas Home Inspectors Registration Fund;

(13)(A) Develop and implement a means for conducting Internet board meetings, which may be observed by the public in real time.

(B) Public participation in the meetings may be permitted in accordance with rules developed by the board;

(14) Establish and maintain an Internet site devoted to home inspection registration and related subjects;

(15)(A) Assume the Secretary of State's responsibilities for home inspector registration by development of or contracting for a support organization to perform the administrative duties required by the board if the Arkansas Home Inspectors Registration Fund totals at least fifteen thousand dollars (\$15,000).

(B) If the fund totals at least fifteen thousand dollars (\$15,000) and the board votes to transfer the responsibilities of the Secretary of State to the board, then the board shall give written notice to the Secretary of State ninety (90) calendar days before the transfer; and

(16) Establish educational requirements for registration to begin after July 1, 2004, including the standards and procedures for approval of educational programs if the maximum number of hours required shall not exceed ninety (90) classroom hours.

History. Acts 2003, No. 1328, § 1.

A.C.R.C. Notes. Acts 2003, No. 1328, § 5, provided: "All regulations adopted by the Homes Inspector Advisory Board un-

der § 17-52-107 shall remain in effect until the new Arkansas Inspector Registration Board adopts regulations, unless the regulations conflict with this act."

17-52-307. Hearings — Review — Access to records.

(a) As part of an investigation or as a condition of renewal, the Arkansas Home Inspector Registration Board may require an inspector to submit in writing inspection reports and other documents to be reviewed by the board.

(b) Requests by the board for copies of inspection reports shall supersede any contract of client privacy or confidentiality whether written or oral.

(c) Any documents submitted to the board as part of an investigation shall:

(1) Be considered as confidential documents;

(2) Be used only for the purpose for which they are requested;

(3) Not be available for public viewing;

(4) Not become part of any official file; and

(5) Not be revealed to any nonboard members.

(d) When the action for which they were requested is completed by the board, the documents shall be returned to the inspector at his or her

own expense or destroyed if the inspector requests that the documents be destroyed.

(e) In fulfilling its duties under this subchapter, the board shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and any person aggrieved by any rule or other actions of the board for which an appeal is not provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., may appeal to the Pulaski County Circuit Court.

(f) All work papers submitted to the board for action on complaints and disciplinary procedures under this subchapter shall not be deemed public records under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 2003, No. 1328, § 1.

17-52-308. Complaints and disciplinary procedures.

(a) Disciplinary hearings conducted by the Arkansas Home Inspector Registration Board for the purpose of determining whether to levy civil penalties under this subchapter and for the purpose of determining whether to revoke or suspend any registration, license, or certificate issued under this subchapter shall be open public meetings conducted as provided for in the Freedom of Information Act of 1967, § 25-19-101 et seq., unless otherwise superseded by provisions of this subchapter.

(b) Upon its own motion or upon written complaint of any person and after notice and hearing as provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the board may suspend or revoke the registration of any home inspector and issue a fine up to one thousand dollars (\$1,000) per violation or occurrence or take any other appropriate disciplinary action for:

- (1) Any violation of the provisions in this subchapter;
- (2) Falsifying any application for registration or otherwise providing any false information to the board or the Secretary of State;
- (3)(A) Conviction in any jurisdiction of a misdemeanor involving moral turpitude or of any felony.
(B) A plea of nolo contendere or no contest is considered a conviction for the purposes of this section;
- (4) Any actions demonstrating untrustworthiness, incompetence, dishonesty, gross negligence, material misrepresentation, fraud, or unethical conduct in any dealings subject to this subchapter or these regulations;
- (5) Adjudication of insanity;
- (6)(A) Use of advertising or solicitation that is false, misleading, or is otherwise deemed unprofessional by the board.

(B) All advertisements, contracts, correspondence, and other documents utilized by a home inspector shall prominently include the home inspector's name and registration number as registered according to this subchapter; or

- (7) Habitual or excessive use of intoxicants or illegal drugs.

History. Acts 2003, No. 1328, § 1; 2005, No. 2014, § 2.

A.C.R.C. Notes. Acts 2007, No. 499, § 2, provided: “(a) Disciplinary hearings conducted by the Arkansas Home Inspector Registration Board for the purpose of determining whether to levy civil penalties under this subchapter and for the

purpose of determining whether to revoke or suspend any registration, license, or certificate issued under this subchapter shall be open public meetings conducted as provided for in the Freedom of Information Act of 1967, § 25-19-101 et seq., unless otherwise superseded by provisions of this subchapter.”

17-52-309. Violation of law — Civil penalties, injunctions, and venue.

(a)(1) It is unlawful for any person not registered under this subchapter to perform any act for which registration is required.

(2) Any person acting as a home inspector within the meaning of this subchapter without a home inspector certificate of registration and any person who violates any other provision of this subchapter shall be guilty of a misdemeanor.

(b)(1) Upon application by the Arkansas Home Inspector Registration Board, a court may grant an injunction, restraining order, or other order as may be appropriate to enjoin a person from:

(A) Offering to engage or engaging in the performance of any acts or practices for which registration is required by this subchapter after a showing that the acts or practices were performed or offered to be performed without a certificate of registration; or

(B) Engaging in any practice or business authorized by a certificate of registration issued under this subchapter upon a showing that the holder presents a substantial probability of serious danger to the health, safety, or welfare of any resident of this state or client of the certificate holder.

(2) Any person cosigning a home inspection report with a registered home inspector becomes subject to the provisions of this subchapter.

(c) Any action brought under this section shall be commenced in the county in which the conduct occurred, in the county in which the defendant resides, or in Pulaski County.

(d) Any actions brought under this section shall be in addition to any penalty under this subchapter and may be brought concurrently with other actions to enforce the provisions of this subchapter.

History. Acts 2003, No. 1328, § 1.

17-52-310. Continuing education.

(a) The Arkansas Home Inspector Registration Board shall implement requirements for home inspectors to successfully complete continuing education annually as a condition to registration renewal.

(b) The board shall:

(1) Review the curriculum of continuing education providers;

(2) Grant, deny, or revoke approval of those providers as appropriate; and

(3) Provide a list of approved providers to all registered home inspectors.

(c) All costs or fees for continuing education will be borne by the individual inspector.

(d) The board shall promote continuing education courses in Arkansas.

(e)(1) Failure to complete continuing education requirements shall result in suspension of the home inspector's registration.

(2) However, the board may waive all or part of the requirements of this section for any registered home inspector who submits satisfactory evidence of his or her inability to meet the continuing education requirements due to debilitating health, hardship, or extenuating circumstances beyond his or her control.

History. Acts 2003, No. 1328, § 1.

17-52-311. Role of Secretary of State.

(a)(1) The Secretary of State shall be the custodian of permanent, official, home inspector registration files and shall maintain permanent records of all home inspector registration applications received since the enactment of this subchapter.

(2) The Secretary of State shall maintain the permanent records of the Arkansas Home Inspector Registration Board.

(b) The Secretary of State shall receive and process applications for initial registration and renewal of registration.

History. Acts 2003, No. 1328, § 1.

A.C.R.C. Notes. Regarding the reference to "the enactment of this subchapter" in (a)(1), Acts 2003, No. 1328 became effective July 1, 2003.

17-52-312. Fund.

(a) There is created in the State Treasury a fund to be known as the "Arkansas Home Inspectors Registration Fund".

(b) All funds, fees, charges, costs, and collections accruing to or collected under the provisions of this subchapter shall be deposited into the State Treasury to the credit of this fund.

(c) The funds shall be used for the purposes as specified in this subchapter.

(d)(1) Except as provided in subdivision (d)(2) of this section, effective with the 2003 registration and under the provisions of this subchapter, all funds, fees, charges, costs, and collections accruing to or collected by the Secretary of State shall be deposited quarterly into the fund.

(2) The Secretary of State shall retain twenty-five dollars (\$25.00) for processing registration applications and renewals until this process is transferred to the Arkansas Home Inspector Registration Board.

(e) The board will process disbursements of those funds as necessary in the administration of this subchapter.

History. Acts 2003, No. 1328, § 1.

17-52-313. Disposition of funds.

(a)(1) The Secretary of the Arkansas Home Inspector Registration Board shall receive, disburse, and account for all income paid to or received by the board.

(2) The secretary shall institute a system of books and financial records satisfactory to the Director of the Department of Finance and Administration.

(3)(A) All fees collected on behalf of the board and all receipts of every kind and nature shall be paid into the State Treasury and shall be credited to the Arkansas Home Inspectors Registration Fund.

(B) The fund shall be for the general uses of the board, and out of it shall be paid all salaries and all other expenses necessarily incurred in carrying into effect the provisions of this subchapter.

(C) Expenditures from the fund shall be substantiated by vouchers and itemized statements at the end of each fiscal year or at any other time when demand is made by the Department of Finance and Administration.

(4) The secretary shall deposit all funds of the board that he or she receives with the State Treasury within forty-eight (48) hours, excluding holidays and Sundays, after he or she receives the funds.

(b) All fines collected for the violation of any provisions of this subchapter shall be paid over to the board to be used by it in the same manner as funds received for the issuance of registration.

(c) The total amount of warrants issued by the board or Auditor of State in payment of the expenses and compensation provided in this subchapter shall not exceed the amount of the application, registration, and other fees collected.

(d)(1) Any surplus funds at the end of the fiscal year may be retained by the board for future expenditures.

(2) The board shall not be required to pay any surplus into the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 2003, No. 1328, § 1.

17-52-314. Registration.

(a) No person shall advertise as a home inspector or undertake or attempt to undertake the conduct of a home inspection in this state without first having complied with this subchapter.

(b) No person who is registered under one (1) name as provided in this subchapter shall engage in business as a home inspector under any other name unless the other name is also registered.

History. Acts 2003, No. 1328, § 1.

17-52-315. Application for registration.

(a) Any person applying for registration or renewal of registration as a home inspector shall be of good moral character and shall submit to the Arkansas Home Inspector Registration Board:

(1) An application under oath upon a form to be prescribed by the board;

(2) A current certificate of insurance issued by an insurance company licensed or surplus lines approved to do business in this state that states that the applicant has procured general liability insurance in the minimum amount of one hundred thousand dollars (\$100,000) and, if applicable, workers' compensation insurance; and

(3) The required registration or registration renewal fee with the application.

(b)(1) A person applying for registration for the first time shall also submit with the application a certified copy of a document attesting to the successful completion of the competency examination.

(2) A person renewing a current registration shall also submit with his or her application a properly completed form that states that the person has satisfactorily completed continuing education requirements for the current year.

(3) A person seeking to renew a lapsed, suspended, or otherwise inactive registration shall provide other documents and comply with procedures as may be prescribed by the board.

(c) The following persons shall be exempt from any educational requirements for initial registration, but not from the requirements concerning the competency examination:

(1) City inspectors certified by the International Code Council; and

(2) Contractors who hold a builder's license and have ten (10) years' experience as a contractor.

History. Acts 2003, No. 1328, § 1.

17-52-316. Fees and reimbursements.

(a)(1) The Arkansas Home Inspector Registration Board may set registration and renewal fees not to exceed three hundred dollars (\$300) per year.

(2) Within forty-five (45) days of the enactment of this section, the board shall notify the Secretary of State of the registration fee for the next year and by June 1 every year thereafter until transferred to the board.

(b) All moneys received under this subchapter shall be used to administer this subchapter.

(c) The board may make reasonable charges for materials provided by the board and for services performed in connection with providing materials.

(d) Other fees authorized to be assessed by the board are:

(1) Delinquent renewal fees not to exceed the amount of the renewal fee;

(2) Inspector training or continuing education provider fees as follows:

(A) Initial qualifying fees not to exceed two hundred dollars (\$200);

(B) Annual renewal fees not to exceed two hundred dollars (\$200);

and

(C) Additional course filing fees not to exceed twenty-five dollars (\$25.00);

(3) Duplicate registration fees not to exceed twenty-five dollars (\$25.00);

(4) Returned check fees not to exceed twenty-five dollars (\$25.00); and

(5) Change-of-address fees not to exceed twenty-five dollars (\$25.00).

History. Acts 2003, No. 1328, § 1.

(a)(2), Acts 2003, No. 1328 became effective July 1, 2003.

A.C.R.C. Notes. Regarding the reference to “the enactment of this section” in

17-52-317. Certificates of registration.

(a)(1) Certificates of registration shall be issued by the Arkansas Home Inspector Registration Board to an applicant after compliance with the registration or renewal requirements of this subchapter and approval by the board.

(2) Certificates shall be consecutively numbered.

(b) When registration is renewed, that person’s registration number shall be perpetuated.

(c) Certificates of registration of a home inspector shall be issued for a period of at least one (1) year and shall expire at the end of a period of up to three (3) years, as may be set by the board.

(d) Notices of upcoming registration expiration and a reminder to renew shall be mailed to registered inspectors no more than sixty (60) days and no less than forty-five (45) days before the expiration date of the applicant’s registration.

History. Acts 2003, No. 1328, § 1.

issued to home inspectors under § 17-52-

A.C.R.C. Notes. Acts 2003, No. 1328, § 4, provided: “Certificates of registration

103, shall remain in effect until his or her registration expires.”

17-52-318. Insurance.

(a)(1) All home inspectors are required to carry general liability insurance.

(2) Coverage limits shall be not less than one hundred thousand dollars (\$100,000).

(b) All policies and certificates shall provide that cancellation or renewal of the policy shall not be effective unless and until at least ten (10) days’ notice of cancellation or nonrenewal has been received in writing by the Arkansas Home Inspector Registration Board.

(c) If the insurance coverage required under this subchapter shall cease to be effective, the insured home inspector shall be required to notify the board in writing, of any lapses in coverage.

(d)(1) After notification, the registration of the affected home inspector shall be suspended until the insurance is reinstated or replaced.

(2) The suspension shall be noted on the inspector's listing on the board's Internet site.

History. Acts 2003, No. 1328, § 1.

17-52-319. Standards of care.

(a) It is the duty of all home inspectors doing business in the state to conduct home inspections with the degree of care that a reasonably prudent home inspector would exercise.

(b) All home inspections conducted for compensation in this state shall be conducted according to the standards of practice and code of ethics set forth by the Arkansas Home Inspector Registration Board.

(c) If agreed, between the inspector and his or her client, an inspection of lesser scope and detail may be conducted.

(d) Copies of all standards of practice and code of ethics set forth by the board shall be filed with the Secretary of State and made available at cost to anyone requesting the rules.

(e) Nothing in this subchapter shall be construed to allow home inspectors who are not registered as professional architects or engineers to perform any analysis of the systems, components, or structural integrity of a dwelling that would constitute the practice of civil, electrical, or mechanical engineering.

History. Acts 2003, No. 1328, § 1.

17-52-320. Limitations.

(a) Any cause of action to recover damages suffered by a consumer as a result of any act or omission of a home inspector relating to a home inspection report must be commenced within one (1) year from the date the report is completed.

(b) Disciplinary action taken against a home inspector by the Arkansas Home Inspector Registration Board shall not in and of itself be the basis for civil or criminal action.

History. Acts 2003, No. 1328, § 1.

17-52-321. Unfair practices.

(a) It is an unfair business practice for a home inspector, a company that employs the inspector, or a company that has a financial interest in a company employing a home inspector to do any of the following:

(1) Perform or offer to perform for an additional fee any repairs to the property on which the inspector or the inspector's company has prepared a home inspection report in the past twelve (12) months;

(2) Inspect for a fee any property in which the inspector or the inspector's company has any financial interest or any interest in the transfer of the property;

(3) Offer or deliver any compensation, inducement, or reward to the owner of the inspected property, the broker, or the agent for the referral of any business to the inspector or the inspection company; or

(4) Accept an engagement to make an inspection or to prepare a report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the report, preestablished findings, or the close of escrow.

(b)(1) A home inspection report shall not be used in any manner other than that agreed to in writing by the inspector and his or her client.

(2) Transfer of an inspection report or portion of a report to any third party absolves the inspector and his or her client of any responsibility for liability for claims or adverse actions arising from the use.

History. Acts 2003, No. 1328, § 1.

17-52-322. Exemptions.

(a) A person who by virtue of his or her employment by a public entity does home inspection work for that agency shall not be required to be registered under this subchapter if the inspections are conducted:

(1) Solely for the benefit of that entity; and

(2) For no compensation other than the employee's salary.

(b) This subchapter shall not apply to:

(1) Any person holding a valid registration, certificate, or license issued by the state if the person's activity is limited to the activity authorized by his or her registration, certificate, or license;

(2) A person who inspects his or her own home; or

(3) A public entity that inspects its residential units with its own personnel specifically trained for the inspection.

History. Acts 2003, No. 1328, § 1.

CHAPTER 53

HEALTH EDUCATORS

SUBCHAPTER.

1. GENERAL PROVISIONS.

2. ARKANSAS BOARD OF HEALTH EDUCATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-53-101. Title.
- 17-53-102. Purpose.
- 17-53-103. Definitions.
- 17-53-104. Violations.

SECTION.

- 17-53-105. Penalty.
- 17-53-106. Construction and applicability.

17-53-101. Title.

This chapter shall be known and may be cited as the “Health Educator Practice Act”.

History. Acts 1997, No. 1237, § 1.

17-53-102. Purpose.

It is the purpose of this chapter to protect the health, safety, and welfare of the public by providing for the certification and regulation of persons engaged in the practice of health education who hold themselves under the title of certified health education specialist or certified professional health educator.

History. Acts 1997, No. 1237, § 2.

17-53-103. Definitions.

As used in this chapter:

- (1) “Board” means the Arkansas Board of Health Education;
- (2) “Certified health education specialist” or “CHES” means a person certified by the National Commission for Health Education Credentialing, Inc., and concurrently certified under this chapter to engage in the practice of health education in this state;
- (3) “Certified professional health educator” or “CPHE” means a person certified under this chapter to engage in the practice of health education in this state;
- (4) “Degree” means a baccalaureate or postbaccalaureate degree from a United States college or university that was accredited at the time the degree was conferred;
- (5) “Health educator” means a person engaged in the practice of health education;
- (6) “Practice of health education” means the integration and application of principles derived from the sciences of biology and physiology, psychology, sociology, and other behavioral sciences and education to enable people, as individuals and as members of social structures, to voluntarily make decisions, modify behaviors, and change social conditions in ways which are health enhancing in any of the following ways:
 - (A) Assessing individual and community needs for health education;
 - (B) Planning effective health education programs;
 - (C) Implementing health education programs;

- (D) Evaluating the effectiveness of health education programs;
- (E) Coordinating health education services;
- (F) Providing resources to health education programs and practices; and
- (G) Communicating health and health education needs, concerns, and resources; and

(7) "Provisionally certified health educator" means a person provisionally certified under this chapter to engage in the practice of health education in this state.

History. Acts 1997, No. 1237, § 3.

17-53-104. Violations.

The following acts shall constitute violations of this chapter:

- (1) Representing oneself to be a certified health education specialist or a certified professional health educator or use the letters CHES or CPHE or any facsimile thereof, or under such title or descriptions offering to give or giving health education services to individuals, groups, agencies, or corporations unless certified under this chapter;
- (2) Attempting to engage in the practice of health education without having first been certified or otherwise permitted to engage in health education activities under the provisions of this chapter;
- (3) Obtaining or attempting to obtain certification or certification renewal by bribery or fraudulent representation; and
- (4) Knowingly making a false statement on any form promulgated by the Arkansas Board of Health Education in accordance with this chapter.

History. Acts 1997, No. 1237, § 13.

17-53-105. Penalty.

Any person who violates this chapter shall be deemed guilty of a Class A misdemeanor.

History. Acts 1997, No. 1237, § 15.

17-53-106. Construction and applicability.

(a) This chapter shall not be construed to limit the professional pursuits of:

- (1) A health educator serving in the armed forces or the United States Public Health Service or employed by the Veterans Administration, provided that the person's practice of health education is related to the person's service or employment;
- (2) A licensed physician, pharmacist, nurse, social worker, psychologist, psychological examiner, licensed professional counselor, dietician, dental hygienist, physical therapist, or occupational therapist if the person's practice of health education is incidental to the practice of his or her profession, provided that those persons do not hold themselves

out under the title of certified health education specialist, certified professional health educator, or health educator, unless so certified;

(3) Any person who has received a doctoral degree from an accredited United States college or university in or with a concentration in health education;

(4) A nonresident health educator practicing health education in this state if:

(A) The health education practice is limited to no more than one hundred eighty (180) consecutive working days; and

(B) The health educator:

(i) Is certified under the laws of another state which has certification requirements at least as stringent as the requirements of this state, as determined by the Arkansas Board of Health Education; or

(ii) Has met qualifications as specified in this chapter for the practice of health education;

(5) A teacher of health education in an elementary or secondary school who meets the certification requirements as set forth by the Department of Education;

(6) A health educator who engages in the practice of health education in a hospital licensed by the State of Arkansas;

(7) Any occupational safety and health professional, such as an industrial hygienist, provided that such persons do not hold themselves out under the title of certified health education specialist, certified professional health educator, or health educator, unless so certified; and

(8) Employees who work under the guidance of a licensed physician, provided that such persons do not hold themselves out under the title of certified health education specialist, certified professional health educator, or health educator, unless so certified.

(b) Students may engage in the practice of health education, provided that such practice is performed under the supervision of a certified health education specialist or a certified professional health educator and is part of the academic requirements leading to a degree in or with a concentration in health education.

(c) Volunteers, staff, or agents working under the direction of a charitable organization registered with the office of Attorney General or a nonprofit corporation may conduct health education related activities, provided that such persons do not hold themselves out under the title of certified health education specialist, certified professional health educator, or health educator, unless so certified.

(d) Employees of nursing homes may conduct health education-related activities, provided that such persons do not hold themselves out under the title of certified health education specialist, certified professional health educator, or health educator unless so certified.

(e) Community volunteers may conduct health education related activities, provided that such persons do not hold themselves out under the title of certified health education specialist, certified professional health educator, or health educator unless so certified.

(f) When invited by school officials, parents or volunteers may conduct health education related activities in private or public school

classrooms or assemblies, provided that such persons do not hold themselves out under the title of certified health education specialist, certified professional health educator, or health educator unless so certified.

(g) This chapter is not intended to apply to foundations, state agencies, any other groups, and other professional boards and associations and their continuing education efforts.

History. Acts 1997, No. 1237, § 4.

SUBCHAPTER 2 — ARKANSAS BOARD OF HEALTH EDUCATION

SECTION.	SECTION.
17-53-201. Creation — Members — Terms — Removal.	17-53-206. Certification of professional health educators.
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17-53-201. Creation — Members — Terms — Removal.

(a) There is created the Arkansas Board of Health Education which shall consist of seven (7) persons all of whom are Arkansas residents with the following qualifications:

(1) Five (5) members who are certified health education specialists or certified professional health educators; and

(2) Two (2) members who are representatives of the public at large.

(b) The members of the board shall be appointed by the Governor, subject to confirmation by the Senate.

(c)(1) The Governor shall designate the terms of the initial appointees so that three (3) members, including two (2) health educators and one (1) member who represents the public at large, shall serve three-year terms; two (2) members, including one (1) health educator and one (1) member who represents the public at large, shall serve two-year terms; and two (2) members who represent health educators shall serve one-year terms.

(2) Successor members shall serve three-year terms, except that a person appointed to fill a vacancy resulting in an unexpired term shall only serve for the remainder of that unexpired term. Any vacancy on the board shall be filled by the Governor in the same manner as other appointments. No member shall serve more than two (2) consecutive terms.

(d)(1) Initial members, who are representatives of the health education profession, shall be selected from a list of persons who have been practicing health education for at least three (3) years submitted to the Governor by the Division of Health Education and Promotion of the

Department of Health in conjunction with the National Commission on Health Education Credentialing, Inc.

(2) Successor members, who are representatives of the health education profession, shall be selected from a list of certified health education specialists or certified professional health educators submitted to the Governor by the board. Each of these board members shall have been practicing health education for at least three (3) years preceding his or her appointment and be listed as a person certified under this chapter.

(e) Upon recommendation of the board made after notice and hearing, the Governor may remove any member of the board for incompetence, neglect of duty, or malfeasance in office.

History. Acts 1997, No. 1237, § 5.

17-53-202. Meetings.

(a) The Governor shall call the first meeting of the Arkansas Board of Health Education within thirty (30) days after its members are first appointed for the purpose of organization. The board shall elect at its first regularly scheduled meeting of each calendar year a chair and vice chair. The board shall meet as frequently as it deems necessary, at such times and places as the board designates. Additional meetings may be held upon call of the chair or upon written request of four (4) members of the board.

(b) A quorum of the board shall consist of four (4) members.

(c) The members shall not be entitled to compensation for their service but may receive expense reimbursement in accordance with § 25-16-902. All reimbursements for expenses authorized by this chapter shall be paid from the Health Education Practice Certification Fund.

(d) All proceedings of the board shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1997, No. 1237, § 6.

17-53-203. Health Education Practice Certification Fund.

(a)(1) The Secretary of the Arkansas Board of Health Education shall receive and account for all money derived under the provisions of this chapter and shall deposit the same weekly into financial institutions other than the State Treasury.

(2) These moneys shall be known as the "Health Education Practice Certification Fund".

(b) There shall be audits of the fund as required by law.

(c) The secretary shall give a surety bond for the faithful performance of his or her duties in the sum of ten thousand dollars (\$10,000) or an amount recommended by the Auditor of State. The premium for this bond shall be paid out of the fund.

(d) The board may make expenditures from the fund for any purpose which is reasonable and necessary to carry out the provisions of this chapter.

History. Acts 1997, No. 1237, § 7.

17-53-204. Powers and duties.

The Arkansas Board of Health Education shall have the following powers and duties:

- (1) Establish an examination requirement if deemed necessary;
- (2) Certify and renew the certification of qualified applicants;
- (3) Establish certification reciprocity agreements with other states;
- (4) Establish and collect fees relating to examination, certification, provisional certification, certification renewal, and other reasonable services as defined by the board;
- (5) Promulgate rules and regulations necessary to implement this chapter;
- (6) Compile an annual report to be filed with the Governor and the Legislative Council by September 1 of each year;
- (7) Define unprofessional conduct by publishing standards of professional responsibility for health educators and publish such standards for practice within twelve (12) months after the first board meeting;
- (8) Conduct disciplinary proceedings as provided for in this chapter; and
- (9) Establish continuing education requirements consistent with those of the National Commission for Health Education Credentialing, Inc. as a means to maintain professional competency.

History. Acts 1997, No. 1237, § 8.

17-53-205. Concurrent certification of health education specialists.

(a) The Arkansas Board of Health Education shall issue a state concurrent certification to a certified health education specialist who:

- (1) Files an application with the board;
- (2) Provides evidence of current certification as a certified health education specialist from the National Commission for Health Education Credentialing, Inc.; and
- (3) Passes an examination if required by the board.

(b) The state concurrent certification of a certified health education specialist shall be effective upon issuance by the board and shall be valid for one (1) year after the date of issuance.

History. Acts 1997, No. 1237, § 9.

17-53-206. Certification of professional health educators.

For one (1) year after August 1, 1997, the Arkansas Board of Health Education shall issue certification as a certified professional health educator to any person who:

- (1) Files an application with the board;
- (2) Provides evidence of having earned a degree from a United States college or university that was accredited at the time the degree was conferred;
- (3) Provides evidence of employment in the practice of health education for at least three (3) of the last ten (10) years preceding August 1, 1997; and
- (4) Passes an examination within two (2) years.

History. Acts 1997, No. 1237, § 10.

17-53-207. Provisional certification.

(a) Provisional certification to practice as a health educator may be issued by the Arkansas Board of Health Education upon the filing of an application and submission of evidence of successful completion of educational requirements as determined by the board.

(b) A provisional certification shall expire eighteen (18) months from the date of issuance. Provisional certification may be renewed one (1) time upon submission to the board of a satisfactory explanation for the applicant's failure to become certified within the original eighteen-month period.

(c) A provisional certification shall permit the holder to practice only under the supervision of a certified health education specialist or certified professional health educator.

History. Acts 1997, No. 1237, § 11.

17-53-208. Reciprocity.

Reciprocity shall be provided for certified health educators from other states provided that the standards for certification in that state are not less than those provided for in this chapter as determined by the Arkansas Board of Health Education.

History. Acts 1997, No. 1237, § 12.

17-53-209. Denial, revocation, or suspension.

The Arkansas Board of Health Education may refuse to issue or renew a certification or may revoke or suspend a certification issued under this chapter for any of the following:

- (1) Violating a provision of this chapter;
- (2) Engaging in unprofessional conduct or gross incompetence as defined by the regulations of the board;

(3) Violating the Standards of Professional Responsibility for Health Educators;

(4) Being found guilty or pleading guilty or nolo contendere to a criminal offense in this or any other state when such an offense is a felony in this state; or

(5) Being found guilty of or pleading guilty or nolo contendere to a felony in a federal court.

History. Acts 1997, No. 1237, § 14.

CHAPTER 54

ARKANSAS MOLD INVESTIGATOR LICENSING ACT

SECTION.

17-54-101. Title.

17-54-102. Definitions.

SECTION.

17-54-103. Mold investigation — Penalty.

17-54-104. Mold investigator licensure.

17-54-101. Title.

This chapter shall be known and may be cited as the “Arkansas Mold Investigator Licensing Act”.

History. Acts 2009, No. 1467, § 1.

17-54-102. Definitions.

As used in this chapter:

(1) “Board” means the State Plant Board;

(2) “Mold” means any fungus, including spores, hyphae, and mycelial fragments; and

(3)(A)(i) “Mold investigator” means a person who for a fee performs the service of examining residential or commercial buildings to confirm or refute the presence of a proliferative source of mold in a residential or commercial building.

(ii) “Mold investigator” does not include an employee of an insurance company or an adjuster when the employee or adjuster is adjusting a claim under an insurance policy.

(B) A service performed under subdivision (3)(A)(i) of this section may be offered as a singular service or combined with any other services.

History. Acts 2009, No. 1467, § 1.

17-54-103. Mold investigation — Penalty.

(a)(1) After January 1, 2010, a person shall not collect a fee for performing services as a mold investigator in the state of Arkansas nor hold himself or herself out as a mold investigator without being licensed to perform a mold investigation by the State Plant Board.

(2) The board may impose a fine not to exceed one thousand dollars (\$1,000) per incident for a violation of this section.

(b)(1) A person licensed under this chapter shall satisfactorily demonstrate one (1) or more of the following qualification criteria:

(A) Certification as a Certified Industrial Hygienist by the American Board of Industrial Hygiene;

(B) Certification as a Certified Microbial Consultant by the American Indoor Air Quality Council or a Certified Indoor Environmental Consultant; or

(C) Successful completion of at least twenty (20) hours of college-level microbiology.

(2) A person licensed under this chapter shall not confirm or refute the presence of mold in a residential or commercial building without having first:

(A) Performed an onsite investigation of the premises conducted under the best practices set forth in the guidelines established by the American Conference of Governmental Industrial Hygienists and the American Industrial Hygiene Association, as they existed on January 1, 2009; or

(B) If air samples or bulk samples of any kind are taken from a residence or commercial building for culture or appropriate examination by a commercial laboratory, the analysis shall be performed by a laboratory accredited by and actively participating in the American Industrial Hygiene Association's Environmental Microbiology Laboratory Accreditation Program.

(3) A written copy of an analysis from the laboratory under this chapter shall be provided to the person or entity that has retained the services of the mold investigator.

(c) A licensed mold investigator shall not interpret the results of a laboratory analysis or make recommendations based on the laboratory analysis unless the licensed mold investigator has at least one (1) of the credentials listed in subdivision (b)(1) of this section.

History. Acts 2009, No. 1467, § 1.

17-54-104. Mold investigator licensure.

(a) The State Plant Board shall administer and enforce the licensure of mold investigators in this state.

(b) The board shall adopt rules necessary to implement this chapter, including without limitation:

(1) Initial registration and annual renewal procedures for licensure of mold inspectors;

(2) Collection of an annual license fee not to exceed one hundred fifty dollars (\$150) per person;

(3) Collection of fines under § 17-54-103;

(4) Establishment of standards of practice and a code of ethics for mold inspectors; and

(5) Enforcement of procedures in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for the suspension and revocation of mold inspector licenses and for appeals of suspension and revocation actions.

(c) Funds received by the board under this chapter shall be deposited into the State Treasury to the credit of the State Plant Board Operations and Facilities Construction Fund and shall be utilized for the general operations of the board.

(d) This chapter does not apply to employees of the state performing work within the scope of their official duties.

History. Acts 2009, No. 1467, § 1.

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